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Supreme Court, U. S.
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VOLUME I

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-224

HAROLD R. SWENSON, Warden,
Missouri State Penitentiary,
Petitioner,

vs.

JAMES WILLIAM STIDHAM,
Respondent.

WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

APPENDIX FOR THE PETITIONER

JOHN C. DANFORTH
Attorney General

KENNETH M. ROMINES
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APPENDIX A—Transcript in: State v. Stidham,

No. 45537

[1] IN THE
CIRCUIT COURT WITHIN AND FOR THE COUNTY
OF BUTLER, STATE OF MISSOURI

STATE OF MISSOURI,)
Plaintiff,)
vs.) No. 3158
JAMES WILLIAM STIDHAM,)
Defendant.)

MURDER IN THE FIRST DEGREE

APPEARANCES:

For the Plaintiff: James T. Riley, Esq., Prosecuting Attorney, Cole County, Jefferson City, Missouri. Rex A. Henson, Esq., Prosecuting Attorney, Butler County, Duncan Building, Poplar Bluff, Missouri.

For the Defendant: Mark Murray Hennely, Esq., Attorney at Law, Suite 1832-34 Arcade Bldg., 812 Olive Street, St. Louis 1, Missouri.

[2] STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

BE IT EVER REMEMBERED, That on this the 23rd day of November, 1954, at the regular September Term, 1954, at the Circuit Court of Cole County, Missouri, begun and held at the Court House in the City of Jefferson, in the County and State aforesaid, before the Honorable Sam C. Blair, Judge of the 14th Judicial Circuit of the State of Missouri and Judge of this Court, the following, among other proceedings, were had, to-wit:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

SEPTEMBER TERM 1954
TUESDAY NOVEMBER 23rd, 1954

State of Missouri, Plaintiff,	)	
vs.	)	No. 5259
JAMES WILLIAM STIDHAM, DON WILLIAM DE LAPP, et al., Defendants.	)	

Now at this day Grand Jury Indictment charging Murder is received and filed and capias warrants issued by the Clerk.

(Which said Grand Jury Indictment is in writing and appearing in the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
SEPTEMBER TERM, 1954

Filed
Nov. 23, 1954
Guy M. Stone
Clerk

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

[3] State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, Jackie Lee Noble, Paul)
Edward Kenton, James William Stidham,)
Rollie Laster, Don Wm. DeLapp, and)
Joseph M. Vidauri,)
Defendants.)

INDICTMENT

The Grand Jurors of the State of Missouri, duly summoned from the body of the County of Cole, State of Missouri, and duly impaneled, sworn, and charged to inquire within and for said County, upon their oaths, present and charge that William R. Hoover, Jackie Lee Noble, Paul Edward Kenton, James William Stidham, Rollie Laster, Don Wm. DeLapp, and Joseph M. Vidauri, on or about the 22nd day of September, 1954, at the County of Cole, State of Missouri, did then and there feloniously, wilfully, deliberately, premeditatedly, on purpose and of their malice aforethought, make an assault upon one Walter Lee Donnell and then and there with dangerous and deadly weapons, to-wit: a sledge hammer, and a knife, and another sharp instrument or dagger, the exact nature of which is unknown to these Grand Jurors, a wooden table leg, and other blunt instruments, the exact nature of which is unknown to these Grand Jurors, and their fists and hands and feet, the said William R. Hoover, [4] Jackie Lee Noble, Paul Edward Kenton, James William Stidham, Rollie Laster, Don Wm. DeLapp, and Joseph M. Vidauri, did feloniously, wilfully, deliberately, premediatedly, on purpose, and of their malice aforethought, forcibly strike, hit, stab,

cut, beat, and stomp the said Walter Lee Donnell, thus and thereby by the means aforesaid and in the manner aforesaid feloniously, wilfully, deliberately, premeditatedly, on purpose, and of their malice aforethought, giving then and there to the said Walter Lee Donnell about his face, head and body, mortal wounds of which mortal wounds the said Walter Lee Donnell on or about the 22nd day of September, 1954, at the County of Cole, State of Missouri, did die.

And so the Grand Jurors, as aforesaid, upon their oaths, as aforesaid, do say that the said William R. Hoover, Jackie Lee Noble, Paul Edward Kenton, James William Stidham, Rollie Laster, Don Wm. DeLapp, and Joseph M. Vidauri, by the means aforesaid and in the manner and form aforesaid, at Cole County, State of Missouri, did feloniously, wilfully, deliberately, premediatedly, on purpose, of their malice aforethought, did kill and murder the said Walter Lee Donnell, against the peace and dignity of the State.

A True Bill
(Signed) Victor Witthaus
Foreman of the Grand Jury

(Signed) James T. Riley
Prosecuting Attorney
Cole County, Missouri

[5] Witnesses for State:

G. Donald Shull
W. S. Barton
John Bauer
Walter Eitzman
P. R. Little
Charles Billings
R. C. Caldwell
Jesse Renderer
Edw. H. Schaaf
Joe Lamar
Thomas Pasley
J. J. Rouse
R. N. Eidson
Hugh Waggoner
J. C. Smith
Clarence Dietzel
Jefferson T. Gentry
Ben H. Cederburg
P. E. Corl
Otto S. Atkinson

Otto McDermott
E. Brown
H. M. Fennimore
John F. Williams
James O. Rhoads
Walter Eitzman
Elmer Oberbech
Thomas Jenneman
E. V. Nash
P. M. Inman
Earl E. Barkley
Ralph King
Leon Wade
Oscar Carrington
Thomas Crane
William Steinhauser
Bernard Poiry
J. G. Hanchey
Sylvester Dulle
James Eynard
Herman Trout
Richard V. Gonzales
James Marvin Creighton
Charles Henry Ford
William Henry Kauffman
Harry (Woody) Miles
Martin Jenson"

[6] (Which said Capias Warrant as to Defendant Don Wm. DeLapp is in writing and appearing in the following words and figures, to-wit:)

CAPIAS

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

THE STATE OF MISSOURI, TO THE SHERIFF OF COLE COUNTY,—GREETING:

YOU ARE HEREBY COMMANDED to take the body of James Wm. Stidham if he be found in your county, and him safely keep so that you have his body before the Circuit Court of Cole County on the First Monday in December next, then and there to answer unto the State of Missouri on an indictment for Murder whereof he stands charged, and have you then and there this Writ, and do you certify to our said Court how you execute this writ.

IN TESTIMONY WHEREOF, I, Guy M. Sone, Clerk of said County, have hereunto set my hand and seal of said

Court, at office in the City of Jefferson, this 23rd day of November, A. D. 1954.

(Seal) (Signed) Guy M. Sone, Clerk

SHERIFF'S RETURN

I certify that on the 23rd day of November, 1954, I read the within Capias to the within named Don William DeLapp within his hearing and presence.

[7] Witness my hand this 23rd day of November, 1954, in the County of Cole, State of Missouri.

Ben S. Markway, Sheriff
(Signed) S. H. Smith, Deputy

Fee $1.00

AND THEREAFTER, to-wit, on the same day, to-wit, November 23rd, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

SEPTEMBER TERM 1954

TUESDAY NOVEMBER 23rd 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, Don Wm. DeLapp, et al.,	)	
Defendants.	)	

Now at this day comes James T. Riley, Prosecuting Attorney within and for Cole County, Missouri, and come the Defendants, William R. Hoover, Jackie Lee Noble, Paul Edward Kenton, James William Stidham, Rollie Laster, Don William DeLapp, and Joseph M. Vidauri, in open Court and all defendants duly arraigned.

It is ordered by the Court that the Clerk of this Court be ordered to furnish each defendant with a certified copy of the indictment herein within twenty-four hours.

[8] The Court finds alleged offenses and defendants are not bailable and the Court orders each defendant committed to the custody of the Warden of the State Penitentiary.

And now, come Defendants James William Stidham, Joseph M. Vidauri, Jackie Lee Noble and Rollie Laster and request the Court to appoint Mark Hennelly, St. Louis, Missouri, their counsel, and he is so appointed.

It is further ordered by the Court that John H. Hendren be appointed to represent Defendant William R. Hoover.

It is further ordered by the Court that Mark Hennelly be appointed to represent Don William DeLapp.

It is ordered by the Court that defendant Paul Edward Kenton be granted time to obtain counsel.

It is further ordered by the Court that S. W. James, Jr. be appointed counsel for Jackie Lee Noble.

It is further ordered by the Court that Russell T. Keyes be appointed counsel for Don William DeLapp.

It is further ordered by the Court that Tweedie Fisher be appointed counsel for Joseph M. Vidauri.

It is further ordered by the Court that H. P. Andre be appointed counsel for William R. Hoover.

AND THEREAFTER, to-wit, on December 6, 1954, the following further proceedings were had herein:

[9] IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

MONDAY DECEMBER 6th, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, Don Wm. DeLapp, et al.,	)	
Defendants.	)	

On this 6th day of December, 1954, the Court, exercising the authority vested by Rule 25.06, Rules of Criminal Procedure, adopted by the Supreme Court April 14, 1952, and effective January 1, 1953, determines and orders that all motions raising defenses and objections, or for production of documents or evidence or discovery, except where issues of fact are involved which are required by the Constitution or by the Laws of this State to be tried by jury; shall be filed in this cause on or before December 15, 1954, and shall be presented to the Court on Law Day, December 20, 1954, or as soon thereafter as the Court can hear defendants and their counsel.

AND THEREAFTER, to-wit, on the same day, December 6th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
MONDAY DECEMBER 6th, 1954

[10] State of Missouri,)
Plaintiff,)
vs.) No. 5259
James William Stidham, Don Wm. DeLapp, et al.,)
Defendants.)

Now at this day, at his request, the Court permits Mark Hennelly to withdraw as counsel for all defendants except James William Stidham, owing to what be believes to be an apparent conflict between the interests of the several defendants.

AND THEREAFTER, to-wit, on the same day, December 6th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
MONDAY DECEMBER 6th, 1954

State of Missouri,)
Plaintiff,)
vs.) No. 5259
James William Stidham, Don Wm. DeLapp, et al.,)
Defendants.)

Now at this day comes James T. Riley, Prosecuting Attorney within and for Cole County, Missouri; and come Defendants William R. Hoover, Jackie Lee Noble, James

William Stidham, Rollie Laster, Don William DeLapp and Joseph M. Vidauri, [11] in their own proper person and by their attorneys and enter herein a plea of not guilty to the charge contained in the indictment, with leave to withdraw the same.

AND THEREAFTER, to-wit, on the same day, December 6th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

MONDAY DECEMBER 6th, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, Don Wm. DeLapp, et al.,	)	
Defendants.	)	

Now at this day it is ordered by the Court that all permissions for withdrawal of pleas of not guilty is for the purpose of permitting defendants to file motions in compliance with the Court's order of this date.

AND THEREAFTER, to-wit, on December 14th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

TUESDAY DECEMBER 14, 1954

State of Missouri,)
Plaintiff,)
vs.) No. 5259
James William Stidham,)
Defendant.)

[12] Now at this day comes defendant, James William Stidham, by his attorney, and files his Motions for Production and Inspection, To Dismiss, for a Severance, for a Polygraph Examination and to Suppress.

(Which said Motion for Production and Inspection is in writing and appearing in the following words and figures, to-wit:)

"In the
Circuit Court of Cole County, Missouri

December Term, 1954

Filed
Dec. 14, 1954
Guy M. Sone
Clerk.

State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, et al.,)
Defendants.)

MOTION OF DEFENDANT, JAMES WILLIAM STIDHAM FOR PRODUCTION AND INSPECTION

1. Defendant James William Stidham moves the Court for an order requiring the Prosecuting Attorney to produce

and to permit the defendant to inspect and copy at a time and place set by the Court before trial of this cause all statements claimed by the State to have been made by the defendant which the State intends to offer into evidence at the trial of defendant.

[13] 2. That the inspection and copying of the statements are necessary to enable this defendant to prepare his case for trial and that defendant cannot safely proceed to trial unless and until he has such information.

(Signed)
Mark M. Hennelly
Attorney for Defendant
James William Stidham,
1832 Arcade Building
St. Louis 1, Missouri
Chestnut 1-2242."

(Which said Motion to Dismiss is in writing and appearing the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM, 1954

Filed
Dec. 14, 1954
Guy M. Sone
Clerk

State of Missouri,)
Plaintiff,)
vs.) No. 5259
WILLIAM R. HOOVER, et al.,)
Defendants.)

MOTION OF DEFENDANT, JAMES WILLIAM STIDHAM, TO DISMISS

Defendant moves the Court to dismiss the Indictment for the following reason:

The indictment is duplicitous for the reason that it [14] purports to charge two crimes. It purportedly charges both a homicide and an assault with intent to kill.

(Signed)
Mark M. Hennelly
Attorney for Defendant
James William Stidham
1832 Arcade Building
St. Louis 1, Missouri
Chestnut 1-2242."

(Which said Motion for a Severance is in writing and appearing in the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
William R. Hoover, et al.,	)	
Defendants.	)	

MOTION OF DEFENDANT, JAMES WILLIAM STIDHAM FOR A SEVERANCE

Defendant, James William Stidham, moves the Court to grant him a severance from his co-defendants.

1. He has an absolute right to a severance.

2. Evidence in this case will be introduced by the State which will be prejudicial against him and which would be inadmissible against him at a separate trial.

3. The defendant, as well as his co-defendants, will [15] obtain a fairer and more impartial trial if he is tried alone.

(Signed)
Mark M. Hennelly
Attorney for Defendant
James William Stidham
1832 Arcade Building
St. Louis 1, Missouri
Chestnut 1-2242."

(Which said Motion for a Polygraph Examination is in writing and appearing in the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM, 1954

Filed
Dec. 14, 1954
Guy M. Sone
Clerk.

State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, et al.,)
Defendants.)

MOTION OF DEFENDANT, JAMES WILLIAM STIDHAM FOR A POLYGRAPH EXAMINATION

Defendant, James William Stidham, moves the Court to appoint an independent polygraph examiner or any other examiner qualified to administer any other type of "lie detector" examination described by the Court, for the pur-

pose of interrogating him relative to the charges set forth in the indictment in this [16] cause at such time and in the presence of such people as the Court shall designate and as grounds for this motion states:

1. Such an examination will assist this defendant in establishing his innocence of the charge set forth in the Indictment.

2. Defendant intends to introduce into evidence the testimony of such examiner and the result of such examination.

This defendant further states to the Court that he is willing to pay the costs of such examination.

(Signed)
Mark M. Hennelly;
Attorney for Defendant
James William Stidham
1832 Arcade Building
St. Louis 1, Missouri
Chestnut 1-2242."

(Which said Motion to Suppress is in writing and appearing in the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM, 1954

Filed
Dec. 14, 1954
Guy M. Sone
Clerk.

State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, et al.,)
Defendants.)

[17] MOTION OF DEFENDANT, JAMES WILLIAM STIDHAM TO SUPPRESS

Defendant, James William Stidham, moves the Court to Suppress as evidence any and all statements claimed to have been made by this defendant to peace officers of the State of Missouri, to guards and officers of the Missouri State Penitentiary and to other officials of the State of Missouri and as grounds for this motion states:

1. All of the aforementioned alleged statements were involuntary and as a result of physical force and threats of physcial force applied against this defendant by police officers of the City of St. Louis, guards of the Missouri State Penitentiary and officers of the Missouri Highway Patrol.

2. The use of any of the aforementioned statements against this defendant would contravene his right to due processes of law as guaranteed by the due process clause of Article I section 10 of the Missouri Constitution and Amendment 14 of the United States Constitution, and would

contravene his privileges against self-incrimination and as guaranteed by Article I Section 19 of the Missouri Constitution.

3. This defendant was further denied the assistance of counsel by not being permitted counsel at the time of the alleged statements in violation of Article I Section 18 (a) of the Missouri Constitution.

[18]

(Signed)
Mark M. Hennelly
Attorney for Defendant
James William Stidham
1832 Arcade Building
St. Louis 1, Missouri
Chestnut 1-2242."

AND THEREAFTER, to-wit, on December 20th, 1954, the following further proceedings were had herein:

DECEMBER TERM 1954

MONDAY DECEMBER 20, 1954

State of Missouri,	)	
	Plaintiff,)	
vs.	)	No. 5259
James William Stidham,	)	
	Defendant.)	

Now at this day Motion of Defendant James William Stidham, for a severance is by the Court taken up and granted.

AND THEREAFTER, to-wit, on the same day, December 20th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
MONDAY DECEMBER 20, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day Motion of Defendant James William Stidham [19] to Dismiss is by the Court taken up and after hearing argument of counsel, doth overrule said Motion to Dismiss.

AND THEREAFTER, to-wit, on the same day, December 20th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
MONDAY DECEMBER 20, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day Motion for Polygraph Examination by Defendant James William Stidham is by the Court taken up and after hearing argument of counsel, doth take said motion under advisement.

AND THEREAFTER, to-wit, on the same date, December 20th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

MONDAY DECEMBER 20th, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

[20] Now at this day Motion to Suppress by defendant James William Stidham is by the Court taken up and after hearing argument of counsel, doth overrule said Motion to Suppress.

AND THEREAFTER, to-wit, on the same day, the 20th day of December, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

MONDAY DECEMBER 20, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day Motion for Production of Statement on behalf of Defendant James William Stidham is by the Court taken up and after hearing argument of counsel, doth take said Motion under advisement.

AND THEREAFTER, to-wit, on the same day, December 20th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

MONDAY DECEMBER 20, 1954

State of Missouri,	)	
Plaintiff,	)	
[21] vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day it is ordered by the Court that Defendant James William Stidham be granted until December 24th, 1954, to file brief herein.

AND THEREAFTER, to-wit, on Monday, December 20th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

MONDAY DECEMBER 20, 1954

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day it is ordered by the Court that the State of Missouri be granted leave to endorse the names of additional witnesses upon the Indictment.

AND THEREAFTER, to-wit, on the same day, December 20th, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
MONDAY DECEMBER 20, 1954

[22] State of Missouri, Plaintiff,
vs.
James William Stidham, Defendant. No. 5259

Now at this day it is ordered by the Court that the case of James William Stidham be set for trial on January 26th, 1955.

AND THEREAFTER, to-wit, on December 23rd, 1954, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
THURSDAY DECEMBER 23, 1954

State of Missouri, Plaintiff,
vs.
James William Stidham, Defendant. No. 5259

Now at this day it is ordered by the Court that all applications for Polygraph Tests are overruled as to each Defendant who has filed same.

AND THEREAFTER, to-wit, on January 3rd, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

[23] DECEMBER TERM 1954

MONDAY JANUARY 3, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, et al.,	)	
Defendants.	)	

Now at this day it is ordered by the Court that rulings on Motions to Produce as per opinion filed this date. (See opinion)

AND THEREAFTER, on January 13th, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

THURSDAY JANUARY 13, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, et al.,	)	
Defendants.	)	

Now at this day comes James T. Riley, Prosecuting Attorney, and confesses motions for production, heretofore argued on January 12th, 1955, and volunteers to produce same within twenty-four hours.

And now, the Court reconsiders the Motion of Defendant James William Stidham, and sets aside ruling heretofore made [24] herein. And now, comes the Prosecuting

Attorney and confesses motion of Defendant James William Stidham for production and volunteers to produce same within twenty-four hours.

AND THEREAFTER, to-wit, on January 24th, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI
DECEMBER TERM 1954
MONDAY JANUARY 24, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day comes the defendant, James William Stidham, by his attorneys, and files his application for continuance, which is presented and by the Court granted.

It is further ordered by the Court that the cause of State of Missouri vs. James William Stidham be set for 9:00 A. M. on February 15th, 1955.

AND THEREAFTER, said Motion of Defendant, James William Stidham for Continuance is in writing and appearing in the following words and figures, to-wit:

"IN THE
CIRCUIT COURT OF COLE COUNTY,
STATE OF MISSOURI

[25]

Filed
1-24-55
Sam C. Blair
Judge

State of Missouri,)
Plaintiff,)
vs.)
William R. Hoover, et al.,)
Defendants.)

MOTION OF DEFENDANT, JAMES WILLIAM STIDHAM FOR CONTINUANCE

Defendant, James William Stidham, moves the Court to grant him a continuance in the above captioned cause and as grounds for this motion states:

1. On the basis of a copy of the written statement given the police by the defendant which was during the preceding week made available to defendant and his counsel certain depositions of endorsed State witnesses appear necessary in order that defendant may prepare a proper defense to the charges against him.

2. Due to the fact that one of defendant's co-defendants is on trial at this time the attendant publicity and notoriety surrounding this matter will serve to re-arouse the citizens of this community and will create bias and

prejudice to such an extent that it will be impossible for the defendant to have a fair trial.

[26] (Signed)
Mark M. Hennelly
William B. Kelleher
Attorneys for Defendant
1832 Arcade Bldg.,
St. Louis, Mo."

AND THEREAFTER, to-wit, on February 14th, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

FEBRUARY TERM 1955

MONDAY FEBRUARY 14, 1955

State of Missouri, Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, Defendant.	)	

Now at this day comes James T. Riley, Prosecuting Attorney, and comes the defendant James William Stidham, by his attorney, William B. Kelleher, and files his application for change of venue and presents same to the Court, and the Court being advised in the matter, does deny said application for change of venue on ground affidavits state no facts and Notice given at 4:45 P.M. on this date is insufficient, this cause being set for trial at 9:00 A.M., February 16th, 1955.

AND THEREAFTER, to-wit, on February 15th, 1955, the [27] following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

FEBRUARY TERM 1955

TUESDAY FEBRUARY 15, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James Wm. Stidham,	)	
Defendant.	)	

Now at this day comes the Defendant, James William Stidham, by his attorney William B. Kelleher, and files his Application for Change of Venue, at 1:45 P.M. this day, accompanied by affidavits. No notice given the prosecuting Attorney of intention to file this application until 1:30 P.M. this date.

And now, comes the Defendant, by his attorney, and presents his application for Change of Venue to the Court at 1:45 P.M. this date, which is considered and by the Court denied for want of reasonable notice.

(Which said Application and Affidavit for Change of Venue, together with Supporting Affidavits are in writing and appearing in the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

RE-FILED
Feb. 15, 1955
at 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15-55
Sam C. Blair
Judge

[28] State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, et al,)
Defendants.)

To: The Hon. James T. Riley, Pros. Attorney, in and for the County of Cole, Missouri:

Please take notice that the defendant, James W. Stidham, by his attorney, William Kelleher, will file in the above entitled cause his Application and Affidavit of five disinterested citizens, residing in different neighborhoods of this county this 15th day of February, 1955.

AND PLEASE TAKE FURTHER NOTICE:

That on the 15th day of February, 1955, at 1 o'clock in the afternoon or as soon thereafter as counsel may be heard, the undersigned attorney for the defendant, will call up for hearing before the Hon. Sam C. Blair, the above Application and Affidavit of defendant, James W. Stidham.

(Signed)
William B. Kelleher
Arcade Bldg.,
St. Louis, Mo.

Received a copy of the foregoing Notice this February 15th, 1955, at 6:40 P.M.

(Signed) James T. Riley

[29] IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Re-filed
2-15-55
@ 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15
Sam C. Blair
Judge

State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, et al.,)
Defendants.)

APPLICATION AND AFFIDAVIT FOR CHANGE OF VENUE

Now comes James W. Stidham, defendant in the above entitled cause and states that by indictment of November 23, 1954, charging this defendant with first degree murder of one Walter Lee Donnell, this defendant will be tried and held to answer said Indictment as provided by Law; and by this application and affidavit for change of venue states that this affiant has good reason and does believe that he cannot have a fair and impartial trial in said cause in Cole County, Missouri for the reasons that newspapers, television, radio, magazines and other manner and means of disseminating stories about this defendant have caused the minds of citizens of Cole County to be biased and prejudiced against this defendant; that the outcome and publicity arising out of the trial of State of Missouri vs. Donald DeLapp, concluded January 28th, 1955, has caused bias and prejudice in the minds of the citizens [30] of Cole County against this defendant; that the above facts have become known to this defendant, first, within the past three days preceding the filing of

this application and affidavit and during all of the above time this defendant has been confined and in custody at the Missouri State Penitentiary.

(Signed)
James W. Stidham

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

James W. Stidham, being first duly sworn, on his oath, states that he has signed the above Application and Affidavit for Change of Venue and that the facts stated therein are true to his best knowledge and belief and believes that he cannot have a fair and impartial trial because the minds of the inhabitants and citizens of Cole County, Missouri, are prejudiced and biased against him.

(Signed)
James W. Stidham

Witness my hand and seal February 15th, 1955.

(Signed)
W. C. Sanders
Notary Public.

(Seal)

My Com. Exps. February 15, 1958.

[31] "IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Re-filed
Feb. 15, '55
@ 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15-55
Sam C. Blair
Judge

STATE OF MISSOURI,)
Plaintiff,)
vs.) No. 5259
WILLIAM R. HOOVER, et al.)
Defendants.)

AFFIDAVIT IN SUPPORT OF APPLICATION OF DEFENDANT JAMES WM. STIDHAM FOR A CHANGE OF VENUE

Comes now Mrs. H. J. Schulte, a credible disinterested citizen residing in the Marion Township neighborhood of Cole County, Missouri, being duly sworn, deposes and says that she has discussed with citizens of the neighborhood in which she resides and has heard discussed by citizens in the neighborhood in which she resides the charge or charges made against defendant James William Stidham in the above captioned case and also other charges made by the State of Missouri against other inmates of the Missouri State Penitentiary at Jefferson City, Missouri, arising out of incidents and events which occurred at said Penitentiary on September 22 and 23, 1954, and that the comments, opinions and conclusions of citizens residing in the Marion Township neighborhood are unfavorable concerning the said James William Stidham and other inmates of the Missouri [32] State Penitentiary against whom criminal charges have been made for and arising out of events and incidents which occurred at said

penitentiary on the dates aforesaid; that, generally, the citizens of said neighborhood express the opinion or conclusion that defendant James William Stidham and other inmates of said penitentiary charged by the State of Missouri with crimes arising out of said events and incidents are guilty of the crimes charged and should be severely punished for said crimes; and that, generally, there prevails among the citizens of said neighborhood hostility and bias against defendant James William Stidham and other inmates of said penitentiary charged with crimes arising out of said incidents and events, with reference to their guilt or innocence of said charges.

WHEREFORE, your affiant says that he verily believes that the minds of the citizens of Cole County, Missouri, are so prejudiced against the defendant that the defendant cannot have a fair trial in said County of the charges brought against him in the above captioned case. Your affiant says further that she is not related by blood or marriage to or of counsel for the defendant James William Stidham.

Dated this 15th day of February, 1955.

/s/ Mrs. H. J. Schulte
Route 5
Jefferson City, Mo.

[33] STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Subscribed and sworn to February 15th, 1955, before me, a Notary Public in and for Cole County, Missouri.

My commission expires February 15, 1958.

(Signed)
W. C. Sanders
(Seal) Notary Public."

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Re-filed
Feb. 15, '55
@ 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15-55
Sam C. Blair
Judge

STATE OF MISSOURI,)
Plaintiff,)
vs.) No. 5259
WILLIAM R. HOOVER, et al.,)
Defendants.)

AFFIDAVIT IN SUPPORT OF APPLICATION OF DEFENDANT James Wm. Stidham FOR A CHANGE OF VENUE

Comes now James H. Brand, a credible disinterested citizen residing in the Liberty Township neighborhood of Cole County, Missouri, being duly sworn, deposes and says that he has discussed with citizens of the neighborhood in which he resides and has heard discussed by citizens in the neighborhood in which he resides the charge or charges made against defendant James William Stidham in the above captioned case and also [34] other charges made by the State of Missouri against other inmates of the Missouri State Penitentiary at Jefferson City, Missouri, arising out of incidents and events which occurred at said penitentiary on September 22 and 23, 1954, and that the comments, opinions and conclusions of citizens residing in the Liberty Township neighborhood are unfavorable concerning the said James William Stidham and other inmates of the Missouri State Penitentiary against whom criminal charges have been made for and arising out of events and incidents which occurred at said

penitentiary on the dates aforesaid; that, generally, the citizens of said neighborhood express the opinion or conclusion that defendant James William Stidham and other inmates of said penitentiary charged by the State of Missouri with crimes arising out of said events and incidents are guilty of the crimes charged and should be severely punished for said crimes; and that, generally, there prevails among the citizens of said neighborhood hostility and bias against defendant James William Stidham and other inmates of said penitentiary charged with crimes arising out of said incidents and events, with reference to their guilt or innocence of said charges.

WHEREFORE, your affiant says that he verily believes that the minds of the citizens of Cole County, Missouri, are so prejudiced against the defendant that the defendant cannot have a fair trial in said County of the charges brought against [35] him in the above captioned case. Your affiant says further that he is not related by blood or marriage to or of counsel for the defendant James William Stidham.

Dated this 15th day of February, 1955.

(Signed)
James H. Brand
RR #3, Jefferson City, Mo.

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Subscribed and sworn to February 15th, 1955, before me, a Notary Public in and for Cole County, Missouri.

My commission expires February 15, 1958.

(Signed)
W. C. Sanders
Notary Public."

(Seal)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Re-filed
Feb. 15, '55
@ 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15-55
Sam C. Blair
Judge

STATE OF MISSOURI,)
Plaintiff,)
vs.) No. 5259
WILLIAM R. HOOVER, ET AL)
Defendants.)

AFFIDAVIT IN SUPPORT OF APPLICATION OF DEFENDANT JAMES WM. STIDHAM FOR A CHANGE OF VENUE

[36] Comes now Charles J. Kolb, a credible disinterested citizen residing in the Jefferson Township neighborhood of Cole County, Missouri, being duly sworn, deposes and says that he has discussed with citizens of the neighborhood in which he resides and has heard discussed by citizens in the neighborhood in which he resides the charge or charges made against defendant James William Stidham in the above captioned case and also other charges made by the State of Missouri against other inmates of the Missouri State Penitentiary at Jefferson City, Missouri, arising out of incidents and events which occurred at said penitentiary on September 22 and 23, 1954, and that the comments, opinions and conclusions of citizens residing in the Jefferson Township neighborhood are unfavorable concerning the said James William Stidham and other inmates of the Missouri State Penitentiary against whom criminal charges have been made for and arising out of events and incidents which occurred at said

penitentiary on the dates aforesaid; that, generally, the citizens of said neighborhood express the opinion or conclusion that defendant James William Stidham and other inmates of said penitentiary charged by the State of Missouri with crimes arising out of said events and incidents are guilty of the crimes charged and should be severely punished for said crimes; and that, generally, there prevails among the citizens of said neighborhood hostility and bias against defendant James William Stidham and other inmates of said penitentiary [37] charged with crimes arising out of said incidents and events, with reference to their guilt or innocence of said charges.

WHEREFORE, your affiant says that he verily believes that the minds of the citizens of Cole County, Missouri, are so prejudiced against the defendant that the defendant cannot have a fair trial in said County of the charges brought against him in the above captioned case. Your affiant says further that he is not related by blood or marriage to or of counsel for the defendant James William Stidham.

Dated this 15th day of February, 1955.

(Signed)
Charles J. Kolb
Rt. #4
Jefferson City, Mo.

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Subscribed and sworn to February 15th, 1955, before me, a Notary Public in and for Cole County, Missouri.

My commission expires February 15, 1958.

(Signed)
W. C. Sanders
(Seal) Notary Public."

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Re-filed
Feb. 15, '55
@ 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15-55
Sam C. Blair
Judge

[38] STATE OF MISSOURI,)
Plaintiff,)
vs.) No. 5259
WILLIAM R. HOOVER, ET AL)
Defendants.)

AFFIDAVIT IN SUPPORT OF APPLICATION OF DEFENDANT JAMES WM. STIDHAM FOR A CHANGE OF VENUE

Comes now Norbert Schellman, a credible disinterested citizen residing in the Jefferson Township neighborhood of Cole County, Missouri, being duly sworn, deposes and says that he has discussed with citizens of the neighborhood in which he resides and has heard discussed by citizens in the neighborhood in which he resides the charge or charges made against defendant James William Stidham in the above captioned case and also other charges made by the State of Missouri against other inmates of the Missouri State Penitentiary at Jefferson City, Missouri, arising out of incidents and events which occurred at said penitentiary on September 22 and 23, 1954, and that the comments, opinions and conclusions of citizens residing in the Jefferson Township neighborhood are unfavorable concerning the said James William Stidham and other inmates of the Missouri State Penitentiary against whom criminal charges have been made for and arising out of events and incidents which occurred at said

penitentiary on the dates aforesaid; that, generally, the citizens of said neighborhood express the opinion or [39] conclusion that defendant James William Stidham and other inmates of said penitentiary charged by the State of Missouri with crimes arising out of said events and incidents are guilty of the crimes charged and should be severely punished for said crimes; and that, generally, there prevails among the citizens of said neighborhood hostility and bias against defendant James William Stidham and other inmates of said penitentiary charged with crimes arising out of said incidents and events, with reference to their guilt or innocence of said charges.

WHEREFORE, your affiant says that he verily believes that the minds of the citizens of Cole County, Missouri, are so prejudiced against the defendant that the defendant cannot have a fair trial in said County of the charges brought against him in the above captioned case. Your affiant says further that he is not related by blood or marriage to or of counsel for the defendant James William Stidham.

Dated this 15th day of February, 1955.

(Signed)
Norbert J. Schellman
523½ Madison Street
Jefferson City, Mo.

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Subscribed and sworn to February 15th, 1955, before me, a Notary Public in and for Cole County, Missouri.

[40] My commission expires February 15, 1958.

(Signed)
W. C. Sanders
Notary Public."

(Seal)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Re-filed
Feb. 15, '55
@ 4:40 P.M.
Guy M. Sone
Clerk

Filed
2-15-55
Sam C. Blair
Judge

STATE OF MISSOURI,)
Plaintiff,)
vs.) No. 5259
WILLIAM R. HOOVER, ET AL,)
Defendants.)

AFFIDAVIT IN SUPPORT OF APPLICATION OF DEFENDANT JAMES WM. STIDHAM FOR A CHANGE OF VENUE

Comes now C. J. Cremer, a credible disinterested citizen residing in the Moreau Township neighborhood of Cole County, Missouri, being duly sworn, deposes and says that he has discussed with citizens of the neighborhood in which he resides and has heard discussed by citizens in the neighborhood in which he resides the charge or charges made against defendant James William Stidham in the above captioned case and also other charges made by the State of Missouri against other inmates of the Missouri State Penitentiary at Jefferson City, Missouri, arising out of incidents and events which occurred at said [41] penitentiary on September 22 and 23, 1954, and that the comments, opinions and conclusions of citizens residing in the Moreau Township neighborhood are unfavorable concerning the said James William Stidham and other inmates of the Missouri State Penitentiary against whom criminal charges have been made for and arising out of events and incidents which occurred at said

penitentiary on the dates aforesaid; that, generally, the citizens of said neighborhood express the opinion or conclusion that defendant James William Stidham and other inmates of said penitentiary charged by the State of Missouri with crimes arising out of said events and incidents are guilty of the crimes charged and should be severely punished for said crimes; and that, generally, there prevails among the citizens of said neighborhood hostility and bias against defendant James William Stidham and other inmates of said penitentiary charged with crimes arising out of said incidents and events, with reference to their guilt or innocence of said charges.

WHEREFORE, your affiant says that he verily believes that the minds of the citizens of Cole County, Missouri, are so prejudiced against the defendant that the defendant cannot have a fair trial in said County of the charges brought against him in the above captioned case. Your affiant says further that he is not related by blood or marriage to or of counsel for the defendant James William Stidham.

[42] Dated this 15th day of February, 1955.

(Signed)
C. J. Cremer
Russellville, Mo.

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Subscribed and sworn to February 15th, 1955, before me, a notary public in and for Cole County, Missouri.

My commission expires February 15, 1958.

(Signed)
W. C. Sanders
(Seal) Notary Public."

AND THEREAFTER, to-wit, on the same day, February 15, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

FEBRUARY TERM 1955

TUESDAY FEBRUARY 15, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day comes the Defendant, James William Stidham, by his attorney, and files his Affidavit for Disqualification of Judge, at 4:45 P.M. this date.

[43] (Which said Affidavit for Disqualification of Judge is in writing and appearing in the following words and figures, to-wit:)

"IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

Filed
Feb. 15, 1955
@ 4:45 P.M.
Guy M. Sone
Clerk.

State of Missouri,)
Plaintiff,)
vs.) No. 5259
William R. Hoover, et al.,)
Defendants.)

AFFIDAVIT FOR DISQUALIFICATION OF JUDGE BY JAMES W. STIDHAM

Comes now James W. Stidham, and who after being first duly sworn, upon his oath, deposes and says that the Hon. Sam C. Blair, Circuit Judge of the County of Cole, Missouri, cannot conduct a fair and impartial trial in this cause by reason of his interest or prejudice, as this affiant verily believes.

Dated this 15th day of February, 1955.

(Signed)
James W. Stidham,
Defendant

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

Subscribed and sworn to before me by the said James W. Stidham, this 15th day of February, 1955.

[44] (Signed)
Marion J. Stewart
(Seal) Notary Public,
Cole County, Mo.

My commission expires Feb. 1, 1956."

AND THEREAFTER, to-wit, on the same day, February 15, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

FEBRUARY TERM 1955

TUESDAY FEBRUARY 15, 1955

State of Missouri,)
Plaintiff,)
vs.) No. 5259
James William Stidham,)
Defendant.)

Now at this day comes the defendant, James William Stidham, by his attorney, and refiles his Notice, Application for Change of Venue, together with supporting affidavits.

(Which said Notice, Application for Change of Venue and Supporting affidavits are set forth within this Transcript and are not re-copied)

AND THEREAFTER, to-wit, on February 16th, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

[45] FEBRUARY TERM 1955

WEDNESDAY FEBRUARY 16, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham,	)	
Defendant.	)	

Now at this day comes the Defendant, James William Stidham, by his attorney, and presents his application to disqualify the regular Judge of this Court and same is granted.

And now, the Judge of this Court notifies the Supreme Court and the Chief Justice thereof that the administration of Justice requires transfer of a Circuit Judge to this Court to try this cause, and said cause is set for trial at 9:00 A.M., March 1st, 1955.

AND THEREAFTER, TO-WIT, ON February 22nd, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

FEBRUARY TERM 1955

TUESDAY FEBRUARY 22nd, 1955

State of Missouri,)
Plaintiff,)
vs.) No. 5259
James William Stidham,)
Defendant.)

Now at this day Order of the Supreme Court of Missouri [46] transferring Hon. George P. Adams, Regular Judge of the 11th Judicial Circuit, to this Court to hear case of State of Missouri vs. James William Stidham, is received and filed.

(Which said order is in writing and appearing in the following words and figures, to-wit:)

"IN THE
SUPREME COURT OF MISSOURI

EN BANC

Friday, February 18, 1955

Filed
Feb. 22, 1955
Guy M. Sone,
Clerk.

In the Matter of the Temporary)
)
Transfer of Judicial Personnel)

WHEREAS, the Honorable Sam C. Blair, Judge of the 14th Judicial Circuit of Missouri, has been disqualified to sit and hear the case of State vs. James William Stidham,

No. 5259, now pending in the Circuit Court of Cole County, Missouri, and has requested the Temporary transfer of a Circuit Judge to said Court to hear said cause;

It is therefore ordered, under Article V, Section 6, Constitution of Missouri, 1945, and Rule 11 of this Court, that Honorable George P. Adams, Judge of the 11th Judicial Circuit of Missouri, be and he is hereby temporarily transferred to said 14th Judicial Circuit, to hear the case of State vs. James William Stidham, No. 5259, now pending in the Circuit Court of Cole County, Missouri; and that such transfer shall [47] remain in effect for the making of any and all orders or the taking of other proceedings that may be required of the trial judge in said cause heard by him.

STATE OF MISSOURI—SCT:

I, Marion Spicer, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the order transferring judicial personnel on the 18th day of February, 1955, as fully as the same appears on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 21st day of February, 1955.

(Signed)
Marion Spicer,
Clerk."

AND THEREAFTER, to-wit, on February 25th, 1955, the following further proceedings were had herein:

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

FEBRUARY TERM 1955

FRIDAY FEBRUARY 25, 1955

State of Missouri,)
Plaintiff,)
vs.) No. 5259
James William Stidham,)
Defendant.)

[48] Now at this day Hon. George P. Adams, Judge of the Eleventh Judicial Circuit of Missouri, and transferred to this Court for trial of this cause, assumes the Bench.

And now, comes the Defendant, James William Stidham, by his attorney, William Kelleher, and presents his Notice, Application and Affidavit for Change of Venue, together with Affidavits in Support of Application for Change of Venue.

It is ordered by the Court that change of venue be granted to the Defendant, James William Stidham, to the Circuit Court of Butler County, Missouri, returnable there on the first Monday in April, 1955, the same being the first day of the April Term, 1955, of the Circuit Court of that County. This order is made on the application of the Defendant, James William Stidham, and on the ground he asserts that the minds of the inhabitants of this County are so prejudiced against him that he cannot have a fair trial in this County and this order is made during the Regular February Term, 1955, of this Court.

The Court finds that the Defendant, James William Stidham, is in confinement and the Sheriff of this County hereby is Commanded to transfer the Defendant, James

William, to the Butler County, Missouri, Jail, and there deliver him to the keeper of such jail, together with the warrant or process by virtue of which the defendant is held under this charge.

[49] It is further ordered by the Court that the Clerk shall make out at once a complete transcript of all of the records and proceedings in this cause, including this order of removal, and the application for it, and he shall certify and transmit the same to the Clerk of the Circuit Court of Butler County, Missouri, and take his receipt therefor.

IN THE
CIRCUIT COURT OF COLE COUNTY, MISSOURI

DECEMBER TERM 1954

TUESDAY JANUARY 18th, 1955

State of Missouri,	)	
Plaintiff,	)	
vs.	)	No. 5259
James William Stidham, et al.,	)	
Defendants.	)	

On this 18th day of January, 1955, it is ordered that a Special Venire issue directing the Sheriff to summon Thirty (30) additional jurors for service on the present panel and to supplement the same during the trial to take place in the above styled cause.

(Signed)
Sam C. Blair,
Judge of the Circuit Court of
Cole County, Missouri.

And thereafter to-wit: On the 5th day of March, 1955, the following order was entered of record:

[50] Miscellaneous Record, Circuit Court, Butler County, Missouri Saturday, March 5th, 1955, In Recess, (Book 10, page 382)

Now on this 5th day of March, 1955, this cause of action is filed in this Court on a Change of Venue from the Circuit Court of Cole County, Missouri.

And thereafter to-wit: On the 4th day of April, 1955, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 268) Monday April 4th, 1955, Regular April 1955 Term

Now on this day, this cause being brought to the attention of the Court, the Court finds the defendant having previously entered a plea of Not Guilty and now demanding trial therein and counsel for the State and for the defendant having previously indicated their preference for a setting herein, this cause is by mutual consent set for April 25th, 1955, for trial.

It is ordered by the Court that a Special Venire of 25 jurors be ordered herein to provide for the panel required by law.

And thereafter to-wit: On the 19th day of April, 1955, the following order was entered of record:

[51] Circuit Court Record, Butler County, Missouri (Book 62, page 310) Tuesday, April 19th, 1955, Regular April 1955 Term

Now on this day, comes the defendant herein, by counsel Mark Murray Hennelly, and leave of Court first had and obtained, moves the Court for Subpoena for

Records of Defendant, Register No. H4H relative to phyical examination of defendant, dated September 29 and 30, 1954, directed to the U. S. Medical Center for Federal Prisoners, Springfield, Missouri. And the Court after due consideration, and being now fully advised, does make the order that said Motion be and the same is hereby sustained, and Subpoena Duces Tecum is ordered thereon.

Now comes the defendant herein, by counsel Mark Murray Hennelly, leave of Court first had and obtained, and files Separate Applications for Writs of Habeas Corpus Ad Testificandum for the following prisoners alleged to be incarcerated in the Missouri State Penitentiary: Cecil Lillybridge; William Douglas; Hugh Van Buskirk; Robert Smedley; Elvin Carroll; Jim Harris; James Black; Virgil Hacker; Bob Wilkerson; Baldy Holloway; Ben Griffin; Woody Burnett; Warren Kammer; Louis Miller; Samuel Norbert Reese; Leon Wade; Donald Lyons; Jolin Reid; Marion Crabtree; Silas Varner and J. D. Brooks. Said Application being in due form, it is ordered by the court that they be sustained and Writ of Habeas Corpus Ad Testificandum ordered to issue to the Warden of Missouri State Penitentiary [52] for each of the above named parties, for their Production and appearance herein in this cause, as witnesses, and the Sheriff of Butler County, Missouri, is ordered to serve said Writs.

And thereafter to-wit: On the 25th day of April, 1955, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 317) Monday, April 25th, 1955, Regular April 1955 Term

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Now at this time, the Court excuses, for cause, the following jurors from the panel: Ernie C. Dunn, George Gregory, William Stephens, and J. D. Snider and L. T. Metz, Jr., before the jury is empaneled and sworn and for reasons stated into the record.

Now on this day, comes the parties herein, Prosecuting Attorney for the State, James T. Riley, and the defendant herein, in person, in the custody of the Sheriff of this County, and in the presence of his counsel, Mark Murray Hennelly, whereupon both defendant and his said counsel being present in open Court, defendant waives formal arraignment, and enters a plea of Not Guilty to the charge of Murder. And this cause coming on to be heard, the same being the day on which this cause has been set for trial, the said parties herein, announce ready for trial and thereupon issues being joined comes now a jury summoned herein, to-wit: Hobert Fowler; Marshall Johnson; [53] W. L. Allison; Floyd Walker; Lydle Beardon; James Hawkins; Paul Baumgardner; A. C. King, Jr.; Charles Ijames; L. C. Fuller; Robert Snider and George Williams, (12) good and lawful men of and from the body of Butler County who are duly selected, impaneled, and sworn to well and truly try the issues now joined herein and a true verdict render to the Court in accordance with the law and the evidence in the case.

Jurors, Irene Eudaley, Allen Garner, Sr., Henry Blackman, Mrs. G. R. Saracini, C. C. Cope, Ed Forrest, Roy Bagents, Glen Terry are excused upon Qualifications on the death penalty. Juror, Eldon Gourley is excused because of reasons stated to the Court upon Examination.

At this time, the jury panel is continued during the Noon Recess and this cause is laid over to 1 o'clock.

The Noon Recess being over, and it now being 1 o'clock, the trial in this cause is resumed and now comes the defendant, by counsel, and leave of Court first had and obtained, dismisses Louis Miller, Ben Griffin, Leon Wade and Jim Harris, as witnesses and for whom Writs of Habeas Corups Ad Testificandum have previously been

issued and Sheriff is ordered by the Court to notify the Warden thereof and not to produce said witnesses so dismissed therein.

Whereupon, the jury is challenged, selected and sworn to try the issues herein, and trial by jury proceeds and progresses in the hearing of the evidence in this cause. Now [54] comes the Prosecuting Attorney for the State, leave of Court first had and obtained, and asks and is granted the rule on witnesses. Opening statement is made by the State. Now comes the defendant herein and waives his opening statement.

Now at this time, the Court learns of newspaper being read by the jury carrying an account of the trial, during the supper recess, and upon examination of the jury by the Court, and upon the Motion of defendant, by counsel, a mis-trial is declared herein in this cause.

It is ordered by the Court that this cause be continued for this term and is ordered set for the week of July 18th, 1955, for trial herein.

Now at this time, the defendant being under sentence to the Missouri State Penitentiary on another charge and having been sentenced thereto and now being under sentence of confinement therein, and because the Court feels and determines for security reasons that the jail and facilities of this county are not, or may not prove to be adequate, the defendant is ordered remanded to the Missouri State Penitentiary, to await trial herein and upon orders of this Court for his return for trial, to this Court. It is further shown that the defendant personally requests his return to the State Penitentiary to await trial herein.

And thereafter to-wit: On the 5th day of July, 1955, [55] the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 389) Tuesday, July 5th, 1955, Regular July 1955 Term

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Now on this day, it is ordered by the Court that a Special Venire of twenty-five (25) jurors be ordered to complete the panel of jurors in this cause.

And thereafter to-wit: On the 14th day of July, 1955, the following order was entered of record:

Miscellaneous Record, Circuit Court, Butler County, Missouri Thursday, July 14th, 1955, In Recess, (Book 10, page 458A)

Now on this 14th day of July, 1955, in vacation of Court, Petitions for Writ of Habeas Corpus Ad Testificandum and by the defendant for Woody Burnett, John Reid, Donald Lyons and Marvin Crabtree, same is taken up by the Court, and after due consideration by the Court, it is ordered that said petitions be sustained and writs are ordered to issue therefor to the Warden of the State Penitentiary for their production in this Court during the trial of this cause, beginning on July 18th, 1955.

Subpoena Duces Tecum for Mr. Joseph Lamar, a custodian of Identification Section of the Missouri State Penitentiary to bring records of Clarence Dietzel and Joseph Lamar, including [56] days employed and employment records for October and November, 1954, all payments made and vouchers of any expense during said months and all records of Walter Lee Donnell, including personal records and classification records and his death certificate, is hereby ordered upon the application of the Defendant.

And thereafter to-wit: On the 18th day of July, 1955, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 426) Monday, July 18th, 1955, Regular July 1955 Term

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IN THE MATTER OF THE JURY:

Now on this day, comes the Sheriff of Butler County, Missouri, and files his report of Special Venire in the case of State of Missouri vs James William Stidham, Case No. 3158.

Now on this day, this cause is called by the Court, and comes the Prosecuting Attorney of Cole County, Missouri, for the State, and comes the defendant herein, in person and by his counsel, Mark Murray Hennelly, and said parties announce ready for trial.

Jurors Flanigan, Cecil Hayes, Belva Hayes, Rhodes, Pigg, Anderson, Faith and Johnson are excused by the Court for failure to qualify on the death penalty. Geneva Arrington excused by the Court upon her request. Oliver Chambers excused [57] because of a hearing defect and Troy Pruitt excused because of his health. Venire of 30 Jurors is completed. Thereupon challenges are made of the jury and comes now a jury summoned herein to-wit: Orville Clark; Clarence Davidson; T. M. Walton; Eugene Barker; John Sparkman; Elvis Hinton; Sam Stilley; Clyde Crawford; James Sentell; Lloyd Surber; Connie Fredwell and Herbert Gaebler, (12) good and lawful men from the body of Butler County who are duly selected, impaneled, and sworn to well and truly try the issues now joined herein and a true verdict render to the Court in accordance with the Law and the evidence in the case, and trial by the jury proceeds in the hearing of the evidence.

[58] BE IT REMEMBERED, that on the 18th day of July, 1955, the above entitled cause came on for trial before the HONORABLE RANDOLPH H. WEBER, Judge of the Circuit Court of the 33rd Judicial Circuit, Poplar Bluff, Missouri, and a Jury, and the following proceedings were had:

An opening statement was made by Mr. Riley.

MR. HENNELLY: The Defendant will reserve an opening statement [59] until the close of the State's Case.

THE COURT: The record may show that Defendant's opening statement is reserved until the close of the State's Case. Who do you have first?

MR. RILEY: Call Sergeant Nash.

SERGEANT E. V. NASH,

BEING SWORN, TESTIFIED:

Direct Examination, by Mr. Riley

Q. Will you state your name please? A. E. V. Nash.

Q. By whom are you employed? A. State Highway Patrol of Missouri.

Q. What is your rank sir? A. Sergeant.

Q. Where are you stationed? A. At General Headquarters at Jefferson City, Missouri.

Q. How long have you been on the Patrol Sergeant? A. Thirteen years.

Q. Were you in the Penitentiary on the morning of September 23, 1954? A. Yes, sir.

Q. Were you in B Basement? A. I was.

Q. What was your employment prior to going on the Patrol Sergeant?

[60] MR. HENNELLY: Object to that Your Honor, that would be totally irrelevant—

THE COURT: What would be the purpose Mr. Riley?

Q. Just to identify him, it don't make any difference.

THE COURT: All right, sustained. I thought maybe it was in connection with some discussion.

Q. Will you mark this Exhibit 1?

Reporter marked Exhibit 1, a plat.

Q. Sergeant, I show you what has been marked as State's Exhibit No. 1, and I will ask you to identify that. A. That is a drawing I have made of the B basement of the State Penitentiary.

Q. And that correctly shows the physical setup there in the basement? A. Yes, it does.

Q. Does it show the various windows and doors? A. Shows the various doors. I eliminated the windows from the sides.

Q. Is that the physical make-up of B basement on the morning of September 23, 1954? A. Yes, it does.

Q. If the Court please, at this time, we offer Exhibit 1 into evidence.

MR. HENNELLY: Object and except to the introduction of the exhibit, State's Exhibit 1, because it is hearsay and no proper [61] foundation has been laid for its introduction at this point, and it contains certain elements of hearsay and there has been no foundation laid as to the time, place and circumstances under which it was made, and there is certain writing and indications on the exhibit which in and of themselves are hearsay, and to introduce it under this situation would be a violation of the Constitutional rights of this Defendant.

THE COURT: I believe the exhibit should be further identified as to directions and measurements and matters contained in these legends here and notations, so that this witness, this Court may determine whether or not this witness knows those things to be a fact, and then I will further consider the acceptance in evidence of this exhibit.

Q. Did you make the measurements in the basement? A. Yes, sir, I did.

Q. And at the time you made these measurements, the physical structure was the same as it was on September 23rd? A. Yes, sir.

Q. Now, are those measurements reflected that you made, are they reflected on this chart? A. Yes, sir, they are.

Q. And you have some figures here, 17, 18 and some on up to 32, what do they represent? A. That indicates the numbering of the cells.

THE COURT: Are those the numbers they bore on that date?

[62] A. Yes, sir.

THE COURT: All right.

MR. RILEY: And do you have notations here?

A. Yes, sir.

Q. Does that represent the separations between the cells? A. Yes, it does.

Q. Is that correctly shown in this writing down here? A. Yes, sir, it is.

THE COURT: Does that represent the separation between all of them?

A. Yes, sir.

Q. Separating the same? A. The separation is the same, yes, sir.

Q. And you have a notation here, now does this, as to cell bars, is that the same entire length? A. Yes, it is.

Q. And you have a notation here as to metal screens, are they the same measurements on all cells? A. Yes, sir, they are.

Q. You have a number here, No. 1, 2 and 3, are they explained here in your writing below? A. Yes, sir, they are.

MR. HENNELLY: Certainly object to that section as being a conclusion, if Your Honor please, and object to the form of that question, whether or not they explain it, and it invades [63] the province of the jury, and it is hearsay.

THE COURT: May I see it please? I didn't read what was on there. Well, I think the information ought to be testified about, rather than— He can tell whether he put that on this plat.

Q. All right. Now Sergeant, as you look at this plat, in this direction, which way is that facing? A. Generally east.

Q. And which way is this? A. That would be south.

Q. And this? A. North.

Q. And this? A. West.

Q. Anything else?

THE COURT: Yes, the objection was made to his statement with reference to the legend which he hasn't testified about. There are statements there as to the measurements, etc., and he hasn't testified about those measurements, what is contained in that legend on the bottom.

Q. Now, this legend down here Sergeant, did you determine the information contained in Item 1 on this legend? A. Yes, I have had occasion to go through each of the gates and I know it takes a different set of keys to go through.

Q. Now, on Item No. 2, did you measure the doors? A. Yes, sir, I measured them both opened and closed, and also the area that is stable, that is not movable.

[64] Q. Now, on Item No. 3, did you measure the distance from the steel bar enclosure, to the entrance wall? A. Yes, sir, I did.

Q. Did you measure—

THE COURT: What is that distance?

A. That is four feet sir.

Q. On Item No. 4, did you measure the distance from the front of the cell door to the exterior wall? A. Yes, sir.

Q. What is that distance? A. Nine feet and four inches.

Q. And on Item No. 5, did you measure the cells? A. Yes, sir, they are nine feet deep and seven feet and three inches wide.

Q. Now, is that all the information that is contained in this writing down here? A. Yes, sir, it is.

MR. HENNELLY: I am renewing my objection for the reasons heretofore stated. I think it was totally unnecessary for the officer to make the writing on here that he made. I think he could have looked at the exhibit without this and told them what the differences was, by just giving the measurements. However, under the circumstances, when he put down his own conclusions, and not only with respect to the keys, but with respect to everything else, that is only an attempt to [65] bolster his own testimony and his writing becomes immaterial and irrelevant to any point in the case.

THE COURT: Overruled, and it may be received in evidence.

Exhibit 1, being a plat, having been received in evidence, and same being too large to attach to this transcript, a photostatic copy of same is attached to the original of this transcript.

MR. RILEY: Will you mark this Exhibit 2?

Reporter marked Exhibit 2, a photograph.

Q. Sergeant, I will show you what has been marked as State's Exhibit No. 2, and ask you if you can tell the Court what that is? A. That is the entranceway from B and C Halls down to the basement of B basement.

MR. HENNELLY: I don't mean to interrupt you, but could you speak a little bit louder please.

A. All right, sir.

Q. Is that photograph a fair representation of what it portrays there? A. Yes, it is.

Q. And is that, does it show the scene as it existed on September 22nd and 23rd, 1954, in the penitentiary? A. The physical structure is the same, but the debris and water that was on the floor has of course been cleared away.

Q. We offer this exhibit in evidence.

[66] MR. HENNELLY: May I, for the purpose of the record, and for saving time, may I ask you to hold up introduction of them and I can make a general objection to all of them. I will make it now, if you want me to, but I thought it would save time.

Q. All right. Mark this Exhibit 3, and this Exhibit 4, and this Exhibit 5, and this Exhibit 6, and this Exhibit 7.

Reporter marked Exhibit 3, a photograph.

Reporter marked Exhibit 4, a photograph.

Reporter marked Exhibit 5, a photograph.

Reporter marked Exhibit 6, a photograph.

Reporter marked Exhibit 7, a photograph.

Q. Hold it down so they can't see what is on the back. Sergeant, I hand you what has been marked as Exhibit 3, and can you tell the Court what this is? A. Yes, that is the main gate entrance to B basement.

Q. Does that photograph show, correctly show that gate? I mean as it exhibited on September 23, 1954? A. Yes, it does.

Q. Sergeant, I show you what has been marked State's Exhibit No. 4, and can you identify that? A.

Yes, that is the gateway leading into the Death Row side of B basement.

Q. Does that correctly show that gate and all its physical features? [67] A. Yes, it does.

Q. At the time of September 23, 1954? A. Yes, it does.

Q. I show you Exhibit No. 5. A. That is a picture of the area outside of the barred steel cage that is surrounding the cells on Death Row side of B basement.

Q. Does that correctly show that area as it existed on the morning of September 23, 1954? A. Yes, sir, it does.

Q. I hand you Exhibit No. 6. A. That is the gate or the doorway leading down inside of the cells of Death Row in B basement.

Q. Does that correctly show the physical features of what it portrays there? A. Yes, it does.

Q. As of the time September 23, 1954? A. Yes, sir.

Q. I now hand you Exhibit No. 7. A. That is a picture of the area inside the steel barred cage that surrounds the cells on Death Row in B basement.

Q. Does that correctly show the physical features of that area that it portrays there as it existed on the morning of September 23, 1954? A. Yes, sir, it does.

[68] Q. At this time we offer in evidence, Exhibits 2, 3, 4, 5, 6 and 7,

MR. HENNELLY: The defendant will object and except to the introduction of State's Exhibits 2, 3, 4, 5, 6 and 7, for the reason that they are hearsay and a proper foundation has not been laid for their introduction and to introduce them under these circumstances would be a violation of the Constitutional rights of the defendant, particularly in the light of the testimony of the officer that they do not represent the condition as it existed on the night in question, for the reason that they fail to show

certain debris and things which were then present on the night in question.

Q. The fact that the debris is not shown in the pictures doesn't change the physical structure, if that is the purpose of this.

THE COURT: The objection may be overruled and they may be received in evidence.

Exhibit 2, being a photograph, having been received in evidence, is attached to the original of this transcript.

Exhibit 3, being a photograph, having been received in evidence, is attached to the original of this transcript.

Exhibit 4, being a photograph, having been received in evidence, is attached to the original of this transcript.

Exhibit 5, being a photograph, having been received in evidence, is attached to the original of this transcript.

[69] Exhibit 6, being a photograph, having been received in evidence, is attached to the original of this transcript.

Exhibit 7, being a photograph, having been received in evidence is attached to the original of this transcript.

THE COURT: Now gentlemen, are you going to hand these to the Jury now?

Q. Yes, sir.

THE COURT: In looking at these exhibits here that are going to be handed to you, just a minute, the pictures, there are some legends on the back, and that is not in evidence, that information is not in evidence, so don't turn them over, just look at the picture part of them. If there is any further objection to that, I could have those legends taped over, but the notations have nothing to do, at this particular time, with this trial, and they are only being introduced for the actual picture side. I wonder, inasmuch as Exhibit 1 is already in evidence, as you hand these exhibits to the Jury, if the witness might designate on the chart where the particular picture is that is being intro-

duced into evidence, for instance Exhibit 1 I believe is, 2 I mean, is the stairway to B basement, as it has been identified now, can you point out on this Exhibit 1, the chart over there where that stairway is that is represented in this picture?

A. Yes, sir, I can.

THE COURT: All right.

[70] A. The picture that you see will be of this stairway that is to your left and to my right, leading into B basement area.

THE COURT: All right, hand that to the Jury. I believe you might identify the location of the next one.

A. The next one has been described as the main door into B basement. This area is that area in which this main gate or main doorway of B basement is located.

THE COURT: All right, hand that to the Jury.

A. Exhibit 3, this picture that you have, will be a picture of this gateway that leads into Death Row side of B basement right here.

THE COURT: All right, you may hand it to the Jury.

A. The next picture is a picture of the area outside of the steel barred area, it runs the entire area of the cell block clear down to the end of the cells. It is outside of the barred area. This next picture is the gate or the cell door that permits entrance to the area inside of the barred area so that you could get to each of the individual cells on Death Row side.

THE COURT: All right, you may hand it to the Jury.

A. This last picture shows the area on the inside of this barred area, and it also shows a mesh hardware cloth that extends two feet out from the front of the cell into the—and the entire height of the cell block there. That is inside [71] of this barred enclosure.

THE COURT: All right, you may hand it to the Jury.

MR. RILEY: Sergeant, I direct your attention to this up here on Exhibit No.1, will you tell the Jury what this line is made up of?

A. This line here which is on the picture here, dots and dashes, is made up of steel bars that extend the height of the cell areas and they extend from this gate entrance the entire length of the cell block area, and to this point here where they connect onto the concrete abutment.

Q. Now, on the top side or the north side of this—what are those, what is that Sergeant? A. This side of the cell block is made up of the same number of cells, sixteen cells, and on this side are segregated the negro inmates during the time of innoculations and until they are put out into the population of the prison.

Q. Now, this whole area as is referred to as B basement, is it actually underground? A. No, sir, B basement is not underground. There is a basement underneath B basement.

Q. I believe that is all at this time.

Cross-Examination by Mr. Hennelly

Q. Sergeant Nash, on the night in question, the night of the riot, that you went into B basement, when was the last time [72] prior to that time that you had been in B basement? A. I was not in the basement the night of the riot.

Q. You didn't go down there at all the night of the riot? A. The night of the 22nd, no, sir.

Q. So that you cannot testify then of your own knowledge with respect to what the conditions were on the night of the riot, can you? A. As of the night of the 22nd, no, sir.

Q. Yes. A. No, sir.

Q. Did I understand you to say that the State's Exhibit 1 reflected the conditions as they existed on the night

of the 22nd? A. Just the physical structures of the building.

Q. You weren't there the night of the 22nd, were you? A. I was at the penitentiary, but not at B basement.

Q. This State's Exhibit is supposed to portray the conditions as they existed in B basement and you weren't down there, is that right? A. I was not down in B basement that night.

Q. Under the circumstances, I am going to ask that it be withdrawn and I renew my objection for the reason that no proper foundation has been laid for its introduction.

THE COURT: The witness, as I understood him to testify, said he was there on the morning of the 23rd, is that correct?

A. Yes, sir.

[73] THE COURT: And had you ever been in there before?

A. I have been in the penitentiary prior to the 22nd.

THE COURT: In B basement before?

A. Yes, sir.

THE COURT: You had been in there before and you were there the day after?

A. Yes, sir.

THE COURT: And the physical structures of B basement were the same on the 23rd as it was the time you were in there before?

A. Yes, sir.

THE COURT: In other words, the building, they didn't tear the building down or change the walls or anything of that kind, did they?

A. The general physical structure of the basement was the same.

THE COURT: The same as it was, the same as you found it on the morning of the 23rd, and the same as it had been as you had found it once before?

A. Yes, sir.

THE COURT: When you were there?

A. Yes, sir.

THE COURT: The objection is overruled.

MR. HENNELLY: When was the last time, prior to the morning of the 23rd, that you were in that basement?

[74] A. Several times prior to then. I had a case to go to the penitentiary to secure records to complete our files at General Headquarters.

Q. The basement Sergeant, had you been in B basement prior to that time? A. As to the exact date, I do not remember.

Q. Had you ever been in B basement prior to that time? A. Yes, sir, I had.

Q. Now then Sergeant, you indicated that this picture properly reflected the conditions as they existed, at least this State's Exhibit 1, as it existed on the morning of the 23rd? A. Yes, sir.

Q. I am going to call your attention to that office which is marked here "Christian Science Chapel", was there a Christian Science Chapel office in there on the morning of the 23rd? A. That room is designated for that particular use.

Q. Was it, was that what it was used for on the morning of the 23rd? A. It wasn't being used for that purpose that morning, there wasn't any office in use that morning down there.

Q. As a matter of fact, that which you have now marked as the Christian Science Chapel office was on the night of the 22nd, and the morning of the 23rd, and for sometime prior to [75] the 22nd, 1955, 1954, really a classification room, wasn't it? A. They sometimes use one office or another. I don't know specifically which one they used all the time.

Q. Well now, when did you make this up? A. That picture was made up sometime prior to the 1st of June, as I remember it.

Q. Sometime prior to the 1st of June, of 1955? A. Yes, sir.

Q. Would you say that it was made at least six months after the night of the 23rd, 22nd rather? A. Approximately.

Q. Now then Sergeant, on the morning of the 23rd, what time approximately did you arrive there? A. The morning of the 23rd?

Q. Yes, sir. A. I had been there all night.

Q. On the night of the 22nd, were you outside of B basement? A. Yes, sir, I was the night of the 22nd.

Q. All right. Now, on the night of the 22nd, when was the first time that you arrived on the scene of the riot itself? A. Five minutes after seven.

Q. Five minutes after seven, and who did you arrive there with? A. Trooper Volkmer.

Q. And you at no time prior to midnight, got into B basement? [76] A. No, sir, I did not.

Q. And when in the morning of the 23rd did you get into B basement? A. It was prior to noon, I would say maybe ten-thirty or eleven-thirty.

Q. At that time, had all the inmates been cleared out of there? A. What do you mean by cleared out?

Q. Were there any inmates in B basement at all when you first arrived on the morning of the 23rd? A. There may have been some of the trustees, most of the inmates had been put back in their proper cells.

Q. Well, when you indicated that there was some difference with reference to debris and rubbage, was that all there on the morning of the 23rd? A. Yes, sir.

Q. Was it still there at ten-thirty and eleven when you got there? A. Yes, sir.

Q. I want to call your attention to these cells which you have marked on here, going from 17 at the rear of

State's Exhibit 1, and going to 32, which would be the cell which would be near the front door, am I not correct in stating that Sergeant? A. Yes, sir.

[77] Q. I will ask you if you can tell the Court and Jury to the best of your knowledge, how many inmates were in those cells when you arrived about ten-thirty on the morning of the 23rd? A. I did not go down Death Row, that side, that morning.

Q. You didn't go down Death Row side? A. No, sir.

Q. Did you go down, proceed at any point past that front door on the morning of the 23rd? A. I didn't go past this front gate entrance here.

Q. Well now then, with respect to the condition as it existed on the morning of the 23rd, in the back of this front door, you don't know, because you weren't back there? A. I did not go back in there.

Q. Did you go back there at anytime prior to the time that you made this picture, this exhibit? A. Yes, sir, I have.

Q. When was the first time that you went back there? A. I am not certain as to how soon after the 23rd. I was in and out of there several times. I wouldn't remember.

Q. Now then, when you told the Court that this State's Exhibit 1 reflected the conditions in B basement as they existed on the morning of the 23rd, that isn't exactly accurate either, is it? A. Yes, it is to the best of my knowledge.

Q. You weren't back there though, were you? [78] A. I was in B basement, and that is a picture of the B basement area.

Q. Were you back in anywhere past cell No. 32? A. No, sir.

Q. You didn't go back there, did you? A. No, sir.

Q. So that whatever was back there on that morning, you didn't see it, did you? A. No, sir, not in the cells.

Q. Your Honor, I am again going to renew that objection.

THE COURT: This witness has testified now two or three times that the plat that he has made which is Exhibit 1, is the physical characteristics of the building. Now, he has indicated on there the thickness of the walls and where the doors were and things of that kind. Those matters don't change. That is part of the building. The objection is overruled.

MR. HENNELLY: Save an exception.

THE COURT: Now he has testified there was debris and rubbage and things of that kind on the morning that he got down there, but this plat is being received in evidence and the Jury and the Court and the witnesses might better enable themselves to follow the testimony of the witnesses, as to directions and places that are being and will be referred to in evidence. Certainly the exhibit can't do anything but be helpful in the [79] explanation and the understanding of the testimony. Now the witness hasn't testified as to what condition the doors were in or what the condition of the bars may have been or whether anything was torn up and things of that kind, but as to the physical characteristics, Exhibit 1, as I understood this witness, it actually reflects the floor plan of that building.

A. That is right, sir.

THE COURT: Overruled.

Q. Your Honor, might I say this, I certainly want the Jury to have everything that is helpful also.

THE COURT: All right, proceed then.

Q. On the other hand—

THE COURT: I have overruled your objection Mr. Hennelly.

Q. Now, when you got there on the night in question, where did you first go at the Penitentiary? A. Are you referring to the night of the 22nd?

Q. The night of the 22nd. A. When I first arrived at the penitentiary I stopped at the main intersection leading into the penitentiary to clear the traffic way there for other cars that were approaching. After a few moments there directing traffic I placed Trooper Volkmer in charge of the traffic assignment and I went up on the wall, No. 3 gate at the penitentiary.

Q. (Out of the hearing of the Jury) I am going to ask the [80] Court to strike from the record, and instruct the Jury to disregard the Court's remarks with respect to the purpose for which Exhibit 1 was being introduced, for the reason that it may have left the Jury with the impression that I was attempting to keep something from them which was going to be helpful and it puts the defendant in a bad light with the Jury and it was made certainly in good faith, and in light of the continued statements of the officer that he wasn't back there, and my understanding was that the Exhibit must reflect the conditions as it existed at the time the crime was committed, my objection was certainly made in the best of faith, and I think that the Court's statement might leave the impression that I was trying to be sharp and trying to keep something from them and under those circumstances, I don't think it should have been made in the presence and hearing of the Jury and I ask that it be stricken and the Jury instructed to disregard it, and that a mistrial be declared.

THE COURT: Well, of course Mr. Hennelly, you made your objection in the presence of the Jury, and you have made that same objection three times, and the Court was merely explaining why he was overruling your objection. Any inferences in your statement as to what the Court's intentions were, of course, without foundation, and this Court didn't have any intention of implying to this Jury or to anybody else that there [81] were any sharp practices being used by anybody. I was merely answering

your objection. I will make an explanation to the Jury at this time. Your objection and request is overruled. Gentlemen of the Jury, during the trial of a lawsuit there are many matters of evidence and procedure which come up from time to time which parties have a right to object to through their counsel, and the fact that the Court may sustain or overrule an objection is not any reflection upon any one party participating in this lawsuit, and the rulings that the Court makes regarding any of these matters are not to be considered by the Jury as any reflection or any intimidation or any reprimand or any denial of any of the rights of any of the parties. I ruled a while ago upon an objection and attempted to explain to counsel my reasons for that ruling, and I want to state at this time that the Jury is not to draw any inferences from the statement made by the Court. If there is any direction to the Jury, I will call your attention to it at the time, and of course will direct the Jury in the matter of instructions at the conclusion of the case, so with that explanation you may proceed Mr. Hennelly.

Q. Now Sergeant Nash, I want you to take your little ruler. To what scale have you set that State's Exhibit 1? A. Approximately one inch to eight feet.

Q. One inch to eight feet? A. Yes, sir.

[82] Q. Now, I want you to take that and tell the Court and Jury what is the distance from the first door as one comes down those steps until one gets immediately in front of the first door which would lead in? A. You have reference to this gate here?

Q. Yes. A. Taking from the stairway to the center of that first entrance way, approximately eighteen feet.

Q. So that taking the shortest possible distance, one entering that front door and going to the first gate, the first place where there is a lock, would have to walk approximately eighteen feet? A. That was taken from the center

of the stairway, not the edge, the edge would make it shorter.

Q. When you say center of the stairway— A. That is from this point to the center of the stairway placing the ruler there and placing it to the center of the gate.

Q. Taking your answer with respect to eighteen feet, have you already come down the steps then? A. Yes, I am leaving the bottom step going to the gate.

Q. How far do you have to walk coming down the steps? A. That is approximately eleven feet.

Q. Now then, how—hold it up so the Jury can see it Sergeant, will you show the Court and Jury, after one gets into [83] that first door, where would one have to go to to get to the second door? A. Go from No. 1 doorway to the No. 2 doorway.

Q. Now Sergeant, with respect to the method in which your exhibit is drawn, if one were standing in front of door No. 1, which direction would you be looking? A. You would be looking, if you were looking toward the cell area, you would be looking generally east.

Q. And if one were standing in front of door 2, and just looking straight ahead, in which way would one be looking? A. Standing in front of door No. 2 and looking down toward the bottom of the picture, you would be looking generally south.

Q. Now, tell the Court and Jury the distance that one would have to go to go from door 1, to door 2? A. The center of door 1, to the center of door 2 approximately eight feet?

Q. Eight feet? A. Yes, sir.

Q. Now, door 1, is that opened with just a large key, or how many locks are on door 1? A. Door 1 is opened with a large key.

Q. Door 2? A. Two is opened with a large key.

Q. Now, there is a third door? A. Yes, sir.

Q. How far would one have to walk to go from the second door [84] to the third door? A. Distance from No. 2 to No. 3 is approximately ten feet.

Q. Now, at the time that you arrived there approximately 10:30 on the morning of the 23rd, where was the first place that you found an attendant of the penitentiary guarding a door, was it at door 1, 2 or 3? A. The night of the 22nd?

Q. You weren't there the night of the 22nd Sergeant, the morning of the 23rd? A. The morning of the 23rd, I don't remember ever finding an attendant from the penitentiary.

Q. Who was with you when you got down there? A. There was approximately fifty to seventy-five officers, St. Louis Police and other officers from different surrounding places.

Q. How did you get in then, did someone have a key? A. I didn't go in past this area here.

Q. Very well. Now then Sergeant, I want you to look at a point which you have marked on there as a wash basin, would you point out to the Court and Jury and tell them where that is? A. Right over here is the toilet and shower room. There is no wash basin pictured on there.

Q. Do you know of your own knowledge now whether or not there was a wash basin of any kind, after one gets past either door, [85] 1, 2 or 3? A. Yes, there is one.

Q. Point it out to the Court and Jury. A. There is a wash basin located approximately at this point, after you come inside of Gate No. 2. It is sitting right about there at the end of the rule.

Q. Now, can you give us any description of that wash basin? A. Nothing other than it is just a wash basin.

Q. Well, is there a light in there of any kind? A. I don't remember if there is or not.

Q. Now then, with respect to the cells themselves, numbering from 17 to 32, are those all cells Sergeant, or is there something besides inhabitable cells there? A. I think that they have made cell 22, as I remember, I may be wrong, but I believe that it is cell 22 that they made into a shower room.

Q. Now, have you indicated on this picture anything about a shower room? A. No, sir, I was just drawing the general structure of the building.

Q. Was there a shower room there when you were there, the last time you were there? A. Yes, sir.

Q. And is it a shower room, which is the general type of shower room, with the general plumbing fixtures of a shower [86] room? A. As I remember it, yes.

Q. And I believe you indicated that that was in, to the best of your knowledge, in 23? A. 22.

Q. 22, I am sorry. A. As I remember, yes.

Q. Do you know whether or not it was in working order on the night of the 22nd, and the morning of the 23rd? A. I had no occasion to check it sir.

Q. Now Sergeant, I am going to ask you with respect to your investigation of this case, when was the first time after the night of the 22nd, or the morning of the 23rd, that you saw the defendant, James Stidham? A. I think that I saw Stidham the evening of the 23rd.

Q. The evening of the 23rd? A. Yes, sir.

Q. Where was he at that time? A. He was brought to the classification office, which is across from the Deputy Warden's office.

Q. That is not in B basement is it? A. Administration Building.

Q. Administration Building proper? A. Yes, sir.

Q. Did you at anytime see the body of Walter Lee Donnell? A. I did not.

[87] Q. Now, when he was brought to the classification room of the Administration Building, did you bring

him or did one of the guards or one of your fellow officers bring him, if you recall? A. As I remember, I think that he was brought by prison authorities. I do not remember for sure.

Q. Now, how far is the Administration Center Building, if you can recall, from the B basement? A. It is approximately a hundred yards.

Q. In which direction? A. East of the Administration Building.

Q. What was the purpose of brining him to that point, if you know? A. We knew that he, as well—

Q. This part Your Honor is going to be hearsay, I will withdraw the question. The officer was going to incorporate—

THE COURT: All right.

Q. Did you question him at that time? A. We talked with him.

Q. Who was with you at that time? A. There was Lieutenant Barton and myself and there may have been another officer present.

Q. Was there an officer there by the name of Curtis, out of Kansas City? A. Not at the time I was talking with Mr. Stidham, no, sir.

[88] Q. And do you know how long he was questioned on the night of the 23rd, in that classification room? A. Fifteen or twenty minutes.

Q. Was he handcuffed at that time? A. As I remember, I don't beleve he was. I am not for sure though.

Q. You know who did the questioning? A. Primaily, Lieutenant Barton.

Q. And after that questioning was completed, where did you take him? A. He was turned again over to the prison authorities.

Q. And you don't know whether or not he went back to his regular cell from where he came or not? A. I don't know where he was taken, no, sir.

Q. When was the next time after the night of the 23rd that you saw the Defendant Stidham? A. I think it was at their arraignment in Jefferson City.

Q. You had nothing to do then with any subsequent questioning of this defendant, is that right? A. That is right.

Q. You weren't present at any of the subsequent questionings? A. No, sir.

Q. No further questions Your Honor.

THE COURT: Any further questions by the State?

MR. RILEY: I think that is all.

[89] MR. HENNELLY: I want to ask one more question. You recall testifying here in this case here in this court room in April of this year, you recall the last time you were on the stand here in this Court House?

A. Yes, sir.

Q. You recall at that time whether or not you testified that you questioned him after the night of the 23rd, that you had questioned him on the 25th and 26th, do you recall whether or not you testified to that? A. I don't remember the dates that I might have mentioned.

Q. Let me ask you this, did you question him on the morning on one occasion? A. No, sir, I did not.

Q. I have no further questions.

Redirect Examination by Mr. Riley

Q. Sergeant, do you recall Mr. Hennelly even asking you about questioning Stidham the last time you were here? A. As I remember the question asked me on the previous time, was he asked me when I had seen Mr. Stidham and as I remember, I testified then it was at his arraignment in the Cole County Court.

Q. That is all.

[90] *Recross-Examination by Mr. Hennelly*

Q. I will ask you if it isn't a fact that the last time you testified here in this case in this Court Room, that

you did testify No. 1, that you had questioned him in the classification room, and that you had questioned him more than once in the classification room? A. No, sir, I do not remember making that statement.

Q. Do you say today Sergeant that you did not testify that you questioned him at all in the classification room? A. No, I didn't say that. We did talk to him in the classification room.

Q. I am sorry, do you say today that you did not testify in this Court, before this Court the last time, that I questioned you about the matter, that you questioned him in the classification room after the night of the 22nd? A. It is possible that I might have, but I don't remember that statement.

Q. No further questions. That is all.

MR. RILEY: Thank you sir.

LIEUTENANT W. S. BARTON,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Would you state your name please? A. W. S. Barton.

Q. And you are a Lieutenant in the Missouri State Highway Patrol? [91] A. Yes, sir.

Q. How long have you been with the Missouri State Highway Patrol? A. Something over fifteen years now.

Q. How old are Lieutenant? A. Forty-five.

Q. What was your occupation befcre—

MR HENNELLY: I object—

Q. I withdraw the question if he is going to object.

THE COURT: All right.

Q. I will ask you if you went to the Missouri State Penitentiary in Cole County, Missouri, on September 22nd, 1954? A. Yes, sir, I did.

Q. What time did you arrive there? A. Ten P.M.

MR. HENNELLY: I am sorry officer.

A. Ten P.M.

Q. Did you go to the area in the Penitentiary known as B basement? A. Yes, sir.

Q. What time approximately? A. Ten-thirty.

Q. What did you find? A. I found a building and the doors considerably damaged, and a lot of debris lying around and some of the cells open and some closed and some men in them, and I found a body.

[92] Q. Where did you find the body? A. Cell 18.

Q. Is that Cell 18 in Death Row? A. Yes, sir.

Q. Will you mark this Exhibit 8.

Reporter marked Exhibit 8, a photograph.

Q. Sergeant, will you describe the body that you found there?

MR. HENNELLY: I didn't get that Mr. Riley.

Q. Will you just describe the condition of the body that you found? A. I found a body, a man's body lying in Cell 18 on the back, with the head to the north and northeast corner of that cell, feet toward the door, which would be the southwest direction. The head was considerably mutilated, large indentation in the right side of the head near the temple. The eyeball was completely out of the socket.

Q. Which eye was that? A. The right eye setting out on top of the socket and the clothes were disturbed or torn or cut or something of that nature, and considerable blood all over the area, cell, the walls and the individual clothing also. I felt of the pulse to see if the subject had any life in him, and at that time it had become stiff and rigor mortis had set in, at least the body was beginning to get stiff, and I was then unable to determine any life in the subject, and so I left the cell at that time.

[93] Q. Did you check the serial number, and how was this subject dressed? A. All of the inmates—

Q. No, how was this one dressed? A. I checked his serial number of his clothes with the serial number of the officials of the Penitentiary.

MR. HENNELLY: I object to that, that will be hearsay, and ask that it be stricken and the Jury instructed to disregard it.

THE COURT: As I understand this witness' testimony, he is just telling what he did.

Q. That is right. You say you checked—

MR. HENNELLY: Your Honor is right, he hasn't yet said what happened as a result of—I withdraw the objection.

A. I checked the number on his clothing with the record, the official records of the Penitentiary, and revealed who the subject was. That is the way they kept track of all of that.

THE COURT: Go ahead and ask your next question.

Q. I will ask you Lieutenant, take a look—what was the number that was on the clothing of this subject found in the cell? A. 64078.

Q. And I will ask you to take a look at State's Exhibit No. 8, and can you identify that?

[94] MR. HENNELLY: Excuse me, I am certainly going to object to—you are only asking him to identify it?

Q. Yes.

MR. HENNELLY: I am sorry, go ahead.

A. Yes, this is a picture of the subject I found in Cell 18 the night of the 22nd of September.

Q. Will you tell the Court that that is the same man? A. Yes, sir.

Q. At this time we offer in evidence State's Exhibit 8.

MR. HENNELLY: Object and except to the introduction of State's Exhibit No. 8 for the reason that it is hearsay and no proper foundation has been laid for its introduction and to introduce it under these circumstances would be a violation of the Constitutional Rights of the Defendant, and is totally immaterial and irrelevant to any point at issue in this case.

THE COURT: Overruled, it may be received in evidence. You may hand it to the Jury.

Exhibit 8, being a photograph, and not being in the hands of the Reporter at the time this transcript is being prepared, will either be attached to the transcript, if same is furnished the Reporter before the transcript is completed, or else same can be had from counsel for Plaintiff.

Q. Will you mark this Exhibit 9.

Reporter marked Exhibit 9, a sledge hammer.

Q. Lieutenant, I will ask you to look at State's Exhibit 9, and [95] tell the Court and Jury, you know what that is? A. Yes, sir.

Q. When was the first time you saw that? A. I found this in Cell 18 in Death Row, alongside of the body that I found down there the night of September 22nd.

Q. Alongside of the body of the man you just identified as being in this photograph? A. Yes, sir.

Q. Now, do you know the weight of that sledge hammer? A. Sixteen pounds.

Q. How large was the indentation on the skull of Walter Lee Donnell? A. Oh, it was, covered an area of two or three inches in diameter, in this area here, maybe more. I would say it was larger than that. Three to four inches in area. The whole side of his face there was mutilated.

Q. Mark this Exhibit 10.

Reporter marked Exhibit 10, a photograph.

Q. I hand you what has been marked Exhibit 10, and will ask you if you know what that is? A. Yes, sir.

Q. Were you present when that photograph was taken? A. Pardon?

Q. Were you present when that photograph was taken? A. Yes, sir, I was.

[96] Q. It wasn't taken in September, 1954? A. No, taken afterwards, after that date.

Q. Lieutenant, can you tell the Court and Jury whether or not that photograph, what that is a photograph of? A. This is a photograph of Cell 18 in Death Row, and also shows some others, but shows a very good picture of the front part of the front door and only door rather of Cell 18.

Q. Now, does that show, correctly show the conditions as they existed at 10:30 on the night of September 22nd, 1954? A. No, sir, it does not.

Q. Now, what is the difference, show the Court if you will Lieutenant. A. The Jury?

Q. No, the Court first.

THE COURT: No, me.

A. The partition of each cell out from the wall immediately in front of the cell, there is a partition with a heavy galvanized wire on it that protrudes out at the wall to keep anything from being handed from one place to the other, from one cell to the other. Now, that night there was a large hole in this screen wire and it was torn down and hanging down. That has since been removed, since this picture was taken.

Q. Now,— A. Before this picture was taken.

Q. Now, except for the fact that this photograph doesn't show [97] all the screen there, and on the night of September 22nd, this photograph would have shown, had it been taken on that night, would have shown the screen in there, but torn down? A. Yes, that is right.

Q. Now, is that the only thing in the physical structure there? A. Yes, I believe that about covers it,

outside of the water and debris and other things laying around on the floor.

Q. At this time we offer State's Exhibit No. 10.

MR. HENNELLY: Defendant will object and except to the introduction of Exhibit 10, for the reason it is hearsay and for the reason that no proper foundation has been laid for its introduction, and for the reason that there exists on the picture a—some person who apparently is placed in a particular position, and that is leading and suggestive and is hearsay, and it may tend to confuse and mislead the Jury and under the circumstances, I object to it.

THE COURT: Does this figure of a man have any particular significance in this case? There is a picture of a man on Exhibit 10.

A. Yes.

Q. And at this particular point that man is standing in front of Cell— A. 18.

Q. 18? A. Yes.

[98] THE COURT: All right, the objection is overruled, and it may be received in evidence.

Exhibit 10, having been received in evidence, being a photograph, is attached to the original of this transcript.

Q. Lieutenant, at the time this photograph was taken, where were you? A. I was in Cell 17.

Q. Now, will you explain to the Jury, hold that photograph up, and tell the Jury how much of the screen there could you see from Cell 17?

MR. HENNELLY: Object to that if Your Honor please, for the reason that that is totally irrelevant, immaterial to any point in issue, and invades the province of the Jury, and is a conclusion.

Q. That is all right, I will show it at a later time.

THE COURT: All right. The Court would permit this witness to testify what he can see from Cell 17 if he wishes.

Q. All right, go ahead. A. This is Cell 17 over here. This is Cell 18 here, with the man standing directly in front of it. And by getting up next to the bars and laying your head close to the bars, you can see the back portion of this man, the back of his shoulders and his shirt and trousers, on down to his feet. Now, he is standing with his toes within twelve inches of—or fourteen inches of the door itself, into the cell. These [99] partitions that protrude out from the wall of the cell block there are two feet wide, which this screen wire is fastened onto. Now, if he was to move back any distance at all—

THE COURT: That would be a conclusion.

Q. We ask that that be withdrawn Your Honor.

THE COURT: He can tell what he saw at that particular place.

MR. HENNELLY: Under those circumstances, I am going to ask that all that testimony be stricken and the Jury instructed to disregard it, and a mistrial be declared up to the point where Your Honor stopped him, for the reason it was a conclusion, it is hearsay, totally irrelevant and immaterial to any point in the case, and invades the province of the Jury, and don't take into consideration a lot of other factors that was in there.

THE COURT: This witness is testifying that standing in the cell, just what on this particular picture he can see, and he has stated where his position was, and what he was able to see as shown on this picture, and I think he is entitled to that testimony, and that testimony is admissible in evidence, and that objection will be overruled.

MR. RILEY: (Out of the hearing of the Jury). I want the record to show that I have refrained from asking this witness who was in Cell 18 at the time this photograph was taken.

THE COURT: Cell what?

MR. RILEY: 18, at the time this photograph was taken, for the [100] reason that at that time, the Defendant, James William Stidham was in that cell, and that he was celling in there at the time this photograph, particular photograph was taken. I will ask the witness that and make that offer of proof now. I don't want it to go to the Jury.

MR. HENNELLY: I say that don't make any difference, who the man was in that cell. That is not the part of my objection.

MR. RILEY: It certainly can't be hearsay.

MR. HENNELLY: The heart of my objection is that the whole thing is totally irrelevant and immaterial. You are proving what somebody else saw.

THE COURT: I don't know what they are going to try to prove. There may be other testimony that is introduced. I don't know. I presume that as testimony develops there will be some significance connected with this. It can't all come in at one time. And this witness may testify and explain the matters as he has already explained it, and the Court has already ruled on it, and the objection is overruled.

Q. Who else did you find in Death Row that night? A. The subject of Sammy Reece, Doc Booker, and a man by the name of Eaton, and a man by the name of Ford, and a man by the name of Creighton.

Q. Where was Creighton? A. He was in Cell 17, the eastern most cell of that tier of cellblocks.

Q. Will you turn around Lieutenant to Exhibit No. 1 on that [101] chart, and point to Cell No. 17? A. Right here is Cell 17.

Q. And where was Cell 18? A. Right next to it.

Q. Cell 18 is where you found the body? A. That is right, sir.

Q. 17 is where Creighton was? A. That is right, he was in this cell here, the end cell.

Q. Now, was the door to Cell 18 open or closed? A. It was open.

Q. And how did you find the door to Cell 17? A. It was locked.

Q. And did you finally get into Cell 17? A. Yes, sir.

Q. How? A. I got the keys from a subject by the name of Ford, who was in his cell locked up, and I don't know which one it was, but it was up in here.

Q. What time, about what time was it when you got Creighton out? A. It must have been eleven o'clock, maybe later, that I got him out of there. I would say in the neighborhood of eleven. It took quite a little bit to get the lock undone.

Q. Going back to the sledge hammer, what did you do with the sledge hammer? A. I took the sledge hammer and locked it up in the Deputy [102] Warden's office. I later taken it to our laboratory and turned it over to our laboratory.

Q. Who did you turn it over to? A. Sergeant Rhodes.

Q. And was Lieutenant Williams there at the time? A. Yes, Lieutenant Williams was there.

Q. And is that sledge hammer in the same condition now as it was at that time? A. Except that it doesn't have as much blood on it as it had at that time.

Q. Now, did you go through all of the cells in Death Row that night? A. I checked them. I didn't go in them.

Q. Did you find Rollie Laster? A. No, he wasn't in there.

Q. Did you find the Defendant, James William Stidham? A. No, sir, he wasn't in there.

Q. Did you find any other wounds or marks on the body, other than the injury to his skull? A. Well, I didn't take any of his clothes off to look, no, sir.

Q. Well, as to the parts of the body that was exposed? A. The part that I could see was his head. That didn't have clothing on it.

Q. What about his neck? [103] A. Well, I mean this part above his shirt, yes, I could see his neck.

Q. Was there an injury to his throat and neck? A. Yes, his throat had been cut.

Q. You will have to speak louder. A. His throat had been cut, yes, sir.

Q. How large? A. Quite a gash across there.

Q. Well, indicate to the Jury. A. I would say three or four inches across here.

Q. On which side? A. It was on this side.

MR. HENNELLY: The left side?

A. I believe it was this side, the right side, the best of my memory.

Q. You said right, and you are pointing to the left. A. Well, I still say it was this side.

MR. HENNELLY: I am going on for the purpose of clarification Your Honor, so we know which side—

THE COURT: He has pointed to the left side.

MR. HENNELLY: Pointed to the left side.

Q. That is all at this time.

Cross-Examination by Mr. Hennelly

Q. Lieutenant, you have been in the State Highway Patrol for some years now, is that right? [104] A. A few years.

Q. In the course of that time, I suppose you have had reason and opportunity to see a number of people who have suffered violent death, have you? A. Yes, sir.

Q. You have seen a number of people who were deceased, and you have examined a number of dead bodies, have you? A. Yes, sir.

Q. In the course of your vast experience with the Department? A. That is right.

Q. I understand that at the time you found this body, that the body was stiff and rigor mortis had set in? A. I am no specialist in that, but he had begun to get stiff.

Q. He had begun to get stiff? A. Yes, sir.

Q. Based on your experience that you have had, in examining other bodies, and having seen other bodies, where rigor mortis had set in, is it your opinion that rigor mortis had set in to this body?

MR. RILEY: If the Court please, this man is not a doctor, and for rigor mortis to set in, in some bodies takes longer than others. I don't know that this man can—

THE COURT: Sustained. The witness has stated that he wasn't an expert, except that the body had begun to get stiff. He didn't know what it was.

[105] MR. RILEY: A body may begin to get stiff and still not be rigor mortis.

MR. HENNELLY: I ask that that be stricken, if Your Honor please.

THE COURT: All right, it may be stricken. As previously stated, remarks of counsel that are not connected with questions that are being asked the witness, are not testimony in the case, Gentlemen of the Jury.

Q. Now then Lieutenant, I believe that you arrived there about ten o'clock that night? A. In front of the Penitentiary.

Q. In front of the Penitentiary? A. Yes, sir.

Q. And looking, if you will Lieutenant, at State's Exhibit 1, which is that plat in back of you there, when was the first time that you entered that building? A. I judge it was around ten-thirty.

Q. Around ten-thirty? A. Yes, sir.

Q. And I will ask you Lieutenant, looking, if you will, at the front part of State's Exhibit 1, which indicates some steps next to a plumber's room, and steps next to the Protestant Chapel, Protestant Chapel office, were there

any State Patrolmen outside of that door, or those doors which lead down those steps? A. Outside of the building?

[106] Q. And would you say whether or not they had set up something of a barricade out there? A. No, the officers set up no barricade. The steps were barricaded by the inmates.

Q. Now, tell us what you mean by the barricade, and where was it situated? A. This shows steps going down from the first floor level to the basement. It doesn't indicate the steps coming from the B and C cell blocks lobby outside. That would be in this area if it was so indicated.

Q. Excuse me, do I understand that there are some steps which are not reflected on this State's Exhibit 1? A. Yes, sir, from the lobby, as I stated before, from B and C cell blocks, coming to the outside part of the building. This shows the steps coming down into the basement.

Q. So that those steps which you refer to are not steps which would be on this section of the plat at all, is that right? A. What do you mean by section?

Q. Well, would those steps, would those steps come down into any point which is shown on State's Exhibit 1? A. They would come down to an area right here, right even with where these start down.

Q. So that the end of those steps are the beginning of these, is that right? [107] A. You have to turn after you come down these, you turn to the right or to the left, to get in on these steps here to get into the basement.

Q. Now, which way would those steps run? A. They would go from the north to the south upward.

Q. From the north to the south upward? A. Yes, sir.

Q. Now, were those steps barricaded? A. Yes, sir.

Q. Who had barricaded them? A. I don't know, the inmates I presume. They were the only ones in there.

Q. Now then Lieutenant, when you arrived there, who did you have with you? A. I had, I didn't have anyone with me when I arrived at the Penitentiary.

Q. When you arrived at B basement, who did you have with you? A. Trooper Finney Ward.

Q. And at that time, were there any inmates outside of those who were locked in their cells, were there any inmates in the outer section of the vestibule there? A. No, sir, there was not an inmate in this area.

Q. Now, as you come down those steps, were there any lights on down there? A. Not in this area right here.

[108] Q. Where was the first place that you saw a light after you got in there? Did you see any lights? A. Yes, there was, I believe there was a light on right in this area right here. I believe there was a light there screwed into the wall, as I remember it. And I don't recall of any other lights being on back in this area. However, it was very light.

Q. Was it necessary for you to proceed with a flashlight? A. I used a flashlight.

Q. Now then, these doors, looking at Door No. 1, was that open when you got there? A. Yes, sir.

Q. And door 2, was that open? A. That was open.

Q. And 3, was that open? A. It was open.

Q. So that you had proceeded without being molested, or without any stop of any kind, into those three doors? A. Outside of debris and stuff of that nature, and water, I wasn't stopped.

Q. Was there a considerable amount of water and debris? A. Lots of watermelons and sticks and chairs and everything.

Q. Lot of broken chairs? A. I wouldn't say a lot of them, but there were pieces of that sort of stuff laying around.

[109] Q. And was there pieces of that cluttering up that area way as one comes down from 32 to 17? A. No, there was a lot of water in this area here.

Q. Did you at anytime that evening, investigate the source of that water? A. Not there.

Q. Sir? A. No, not there.

Q. Was it a condition which indicated to you that the water was still running when you got there? A. No. I am sure it didn't accumulate anymore after the high rise.

Q. Can you give the Court and Jury any idea as to how deep that water was? A. It would vary because of the fact that the floor isn't level all the way through, and some places it is worn off more than others, and there would be deeper spots.

Q. Very well. At the deepest point would it be above your ankles? A. No, I wouldn't say it was. I wouldn't say it was that deep. I got my feet wet, but I don't believe I went over my shoes.

Q. Now then, I believe that you indicated that the keys were missing when you first got in there, is that right? A. What do you mean by missing?

Q. I mean you had to get the keys from somebody, didn't you? [110] A. Yes, I made an inquiry as to who might have the keys.

Q. Now, you got the keys from Mr. Ford, is that right? A. Yes, sir.

Q. A colored inmate? A. He is.

Q. Did you have some difficulty in getting them from him? A. No.

Q. Did he tell you at first that he didn't have them? A. That is right.

Q. And did you persuade him to give them to you? A. I said I had information that he had them, and I wanted them.

Q. And he just handed them over to you? A. He gave them to me.

Q. Is that the way it was? A. Yes, sir.

Q. Now then, it wasn't necessary for you to use any other type of persuasion? A. No, sir, none whatsoever.

Q. Now then Lieutenant, where was the first place you went after you got those keys? A. I went back and tried to get Creighton out of his cell. He was in such a condition, I felt like it was necessary to get him to a hospital.

Q. All right. Now then, I want you to look at State's Exhibit 1, which is this plat, and I believe you indicated previously that [111] Creighton was in Cell 17, is that right? A. That is right.

Q. Look, if you will, at this exhibit Lieutenant, and tell us where in that cell you first saw Creighton? A. I went down in the cell that he was standing hollering and yelling for help, and he was right up next to the bars, next to the front.

Q. Would you say at that time, let me ask you this. Strike that. In the course of the time that you have been with the State Highway Patrol, I suppose you have had plenty of opportunity to see people in hysteria, have you? A. Yes, sir.

Q. Would you say that Creighton was in a hysterical condition when you arrived there? A. He was injured, he was hurt.

Q. All right. Now, did you see some marks on him which indicated that he had been hurt? A. Yes, sir.

Q. Where was he marked? A. On his head and teeth and jaw and hand.

Q. Based on your experience in the Department, and bodies that you have seen, and people that you have seen that were injured, would you say that he had sustained

considerable injury prior to the time that you had arrived there? A. Yes, I would say he had.

[112] Q. Very well. Now then, did you first get Creighton out of his cell before you did anything else Lieutenant, or did you go to Donnell's cell before you got Creighton out? A. I, on my way down the corridor inside the cell cage in here, I checked the other cells to see that they were locked first, and then I found this one, naturally, because I come to it before I did Creighton's, and then I checked Creighton's and couldn't get him out, because I couldn't get the door open, and had nothing to open it with, and then I returned back here and checked this other side, which is the isolation ward, more or less, for new prisoners, and then returned back here. I didn't want them to rush me from the rear or something of that nature, and I seen that these were all secured, and I came back, immediately back here and got the keys from Ford and proceeded to let Creighton out.

Q. Do I understand that before you left, even knew Creighton was there, you had first looked into Cell 18? A. I knew somebody was back there because I could hear him holler and hollering for help, and that was my aim, as I proceeded down here, checking all these cells before I got to him, I run onto Donnell's body.

Q. So that you stopped at least and looked at Donnell's body before you ever found Creighton, is that right? A. That is right.

Q. Did you spend some time there at Donnell's body [113] A. Didn't take very long. I don't think I was in there over thirty seconds.

Q. You were in there thirty seconds? A. Yes, sir.

Q. Now, at that time, where was Creighton? A. Still in his cell.

Q. Was he back in his cell? A. Oh, he was up there, you could tell by then that it was an officer.

Q. Now, after you came back, did you first get Donnell's body out of there before you did anything about getting Creighton out? A. I didn't remove Donnell's body from there at all. While I was getting Creighton out of his cell, Donnell's body was removed.

Q. Would you say that all in all, you only spent those thirty seconds in Donnell's cell? A. I don't believe over thirty seconds, or a minute at the most. I had no reason to spend any more time in there.

Q. And that was, did you ever see that body after that time? A. No. I seen it to the front.

Q. That is the last time you saw that body? A. Yes, sir.

Q. You saw it for thirty seconds, and that the eyeball was hanging out there and that there was a big gash on the head, and [114] the lights were out, because you had to use a flashlight, and you tell the Court and Jury that there isn't any question in your mind, but what that man, that the man that you saw there was the man whose picture is shown in State's Exhibit 8? A. That is right.

Q. Is that right? A. That is right.

Q. In that thirty seconds—you—is that when you looked at his neck and these other marks on him? A. That is right. It didn't take any time to do that.

Q. Still had the flashlight, did you? A. That is right, but there was other lights. I didn't take—

Q. Was there any other lights that was on back there either in the vicinity of cell 17 or 18? A. Not that I recall, in the building, but there was lights coming from the fire.

Q. Coming from the fire? A. Yes, sir.

Q. But you did have your flashlight on didn't you? A. Yes, that is right, I had my flashlight.

Q. Now then, did you incorporate any of your findings with respect to the condition of that body, in any report which was given to the Vital Statistics Bureau for Cole County? A. I don't know whether they got it or not.

[115] MR. RILEY: If the Court please, I presume that Cole County has got a Vital Statistics Bureau, and the records would be the best evidence.

THE COURT: Sustained.

Q. I am sorry, I withdraw it. I will rephrase the question. You were the first man to find the body and you were in charge there that night, weren't you? A. I don't know, no, I wasn't in charge.

Q. Well, let me ask you this, did you at anytime submit to any authorities in Cole County, either to the Penitentiary authorities or to the Vital Statistics Bureau, any information with respect to the condition of the body when you found it? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you at anytime make out a report indicating that the man had been shot? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you at anytime after the time that you had found that body, have reason and opportunity to inspect a death certificate on that body? A. No, sir.

Q. Very well. Now then, how long did you stay there that night Lieutenant? A. I was inside the Penitentiary all night.

[116] Q. You were in there all night? A. Yes, sir.

Q. And when was the first time, after you had arrived there on the night in question, that you saw the Defendant, James Stidham? A. I saw him, oh, it was during the night, I don't know what time it was.

Q. And where did you see him? A. He was standing out just off of the lobby on the same floor level, on the B side of the cell blocks.

Q. And would the position you saw him be indicated on State's Exhibit 1 there? A. I can't do it there.

Q. You mean— A. That isn't what I am talking about. That isn't the floor level I am referring to.

Q. Tell us with respect to that State's Exhibit 1, where was he, was he upstairs or outside? A. He was upstairs above this.

Q. All right. Did you question him or talk to him at that time? A. I had no reason to.

Q. Did you question or talk to him at anytime after the night of the 22nd? A. I talked to him on the night of the 23rd.

Q. Now, where was that questioning, where did that questioning [117] take place? A. In the Classification Room, just off of the large tunnel across from the Deputy Warden's Office.

Q. You know what time of the day or night that was? A. Well, I judge it to be around about—between eight and nine, somewhere in that neighborhood, sometime after we had gone to work.

Q. Now, the Classification Room Lieutenant, is there furniture in there? A. Yes, there is seven or eight chairs and a table.

Q. I would defer for a moment to the State, if they want to offer this, and won't object to it Your Honor.

THE COURT: Are you intending to offer it?

MR. RILEY: I might as well, and let the Jury see it.

THE COURT: You might have it identified, was it marked?

MR. RILEY: Mark it Exhibit 11.

Reporter marked Exhibit 11, a photograph.

Redirect Examination by Mr. Riley

Q. Lieutenant, I will show you what has been marked as State's Exhibit 11, and will you tell the Court and Jury what that is? A. Yes, this is a photograph of the Classification Room.

Q. Does that correctly show the physical features of that room? A. Yes, sir.

[118] Q. On September 23, 1954? A. Yes, sir, it does.

Q. We at this time offer Exhibit No. 11.

MR. HENNELLY: No objection.

THE COURT: It may be received in evidence.

Exhibit 11, being a photograph, having been received in evidence, is attached to the original of this transcript.

THE COURT: I believe we will take a recess at this time Gentlemen. Now during the recess, you will be taken up to your Jury Room, and don't discuss this case among yourselves. Of course nobody is supposed to talk to you and there won't be anybody able to get to you up in this Jury Room, in the Jury quarters. They are available for the Jury, but during the recess of this Court, and when you go to the Jury Room, don't discuss the case with anyone or permit anyone to talk with you about it. Now, I think we have a pitcher of ice water and the Sheriff's office, one of the deputies will bring some ice water up to you, for you. I think they have some cups up there and you can have a drink of ice water. The Court will be in recess for a few minutes.

The Court recessed at 3:00 P.M. until 3:15 P.M.

Recross-Examination by Mr. Hennelly

Q. Now Lieutenant, I am going to show you what has been accepted in evidence as State's Exhibit 11. At the time you [119] questioned the Defendant Stidham, was it in that room that is reflected on State's Exhibit 11? A. That is right.

Q. And at the time he was brought in was he seated at that table? A. Yes.

Q. And at that time was he handcuffed, if you know? A. No, sir.

Q. And how many men were there questioning him at that time? A. Well, I don't recall, five or six of us.

Q. And was he sent back to his cell then? A. That is right.

Q. And when was the next time that you questioned him? A. I never did talk to him anymore.

Q. You never did question him again? A. No.

Q. Was that the last time you had anything to do with Stidham personally, with respect to your handling of this case? A. Outside of conveying him back and forth to Cole County Court House.

Q. Aside from that? A. Yes.

Q. Very well. Now then, with respect to this, which has already been accepted in evidence as State's Exhibit—

THE COURT: I don't believe it has been referred to as an exhibit.

[120] MR. RILEY: Exhibit 9.

Q. Is it your testimony that that was found in one of the cells on the night of 22nd? A. Found in cell 18.

Q. In cell 18? A. Yes, sir.

Q. Taking into consideration the front part of the cell, where did you find it? A. As I stated before, the body was lying on its back in a northeast southwest direction, which would put his head closer to the east wall and the sledge hammer was right near his shoulder and the wall. Just a very short space there.

Q. Now, I believe there was considerable blood on this, isn't that right? A. Yes, sir.

Q. And considerable blood all over the walls in that cell, is that right? A. I don't know about all over the walls, it was particularly on the back wall and east wall.

Q. Back wall and east wall? A. Back wall and east wall.

Q. Was there blood on the ground? A. Well, there is no ground there.

Q. I mean— A. That is the floor.

Q. On the basement? A. Tile floor, and it was covered with [121] water and partly covered with water and blood in there on the floor and water together.

Q. Now, can you tell the Court and Jury, is there a bed in that cell? A. I believe that cell just had a mattress in it at that time.

Q. As a matter of fact, all those cells only had a mattress on the floor? A. No, that isn't right.

Q. That isn't right? A. No.

Q. In that cell, he was on a mattress? A. Best I can recall, it was a mattress in there, but there could have been a bed, a very low bed, but I don't believe so.

Q. Now, I believe that you indicated that you took this out of here, you took this, which has already been marked Exhibit 9, out of the cell, and that you then put it in the Deputy Warden's office? A. Taken it up there and locked it up in a locker after marking it for identification.

Q. Isn't it the custom and the practice of the State Highway Patrol to take evidence over to the Headquarters? A. When they get it together.

Q. Well, you had that didn't you? A. That is right, but I had other things to do besides lugging [122] that sledge hammer around all night.

Q. When was the next time you went and got it Lieutenant? A. It was the following day, I believe it was, that I took it to, could have been a day or two later. I knew where it was, because it was locked up. I wouldn't say just whether it was the next day or not.

Q. Was it locked up with a number of other sledges? A. No, sir.

Q. Was it in a place all by itself? A. Yes, sir.

Q. Where was it? A. In the Deputy Warden's office.

Q. Was it in a cabinet of some kind? A. Yes, sir, a cabinet or a little safe.

Q. Sort of a cabinet or safe, whatever you want to call it? A. Yes, sir.

Q. Was there a combination on it? A. No, a padlock on it.

Q. Padlock? A. Yes.

Q. Then you took it over to Headquarters, is that right? A. That is right.

Q. Now, that is a section of the State Highway Patrol, which is given over to laboratory analysis of things, isn't that right? A. Yes, sir.

Q. And I believe that the State Highway Patrol has a section [123] for the handling of the identity, identification of blood and blood specimens and finger prints and things of that kind? A. Yes, there is a laboratory.

Q. Now, I am going to ask you what is the physical difference on this exhibit besides the blood, from the night that you first saw it? A. I put two pieces of paper on it, and wrapped this here tape around it, because handling it, this handle was splintered, and I didn't want to get splinters in my hands.

Q. Was it splintered or broken when you first saw it? A. Yes.

Q. I am sorry? A. Yes.

Q. And this, was it all in one piece when you found it? A. Just like that, with exception of that, which I indicated.

Q. All right. When did you put the tape on it Lieutenant? A. When I taken it from the Deputy Warden's office to the Penitentiary.

Q. When you took it— A. From the Deputy Warden's office to the lab I mean.

Q. You know what date that was? A. I won't say for sure, but it couldn't have been but a day or two, after I found it.

Q. No further questions.

[124] *Redirect Examination by Mr. Riley*

Q. Lieutenant, when you got the keys from Ford, where was he? A. Where was Ford?

Q. Yes. A. He was in one of these cells right in here. I couldn't tell you positively which cell he was in.

Q. Was his door open or closed? A. No, sir, his door was closed and locked.

Q. Now, Lieutenant, you said that you could see down in there, how could you see?

MR. HENNELLY: Object to that, that question is too vague and indefinite and speculative, and calls for a conclusion.

Q. You said you had a flashlight? A. Yes, I used a flashlight part of the time. It wasn't necessary for me to use the light to get around with, but to look.

Q. Was there any other lights down there? A. Yes, there was considerable light coming into the building, but as I stated before, I believe there was one light burning right up here, was all that I recall. There could have been another dim light down in there somewhere, but I don't recall it.

Q. Well, was there any other light coming from anyplace? A. Yes, sir, there was. The back of the building here, the [125] cellblock which is the east end of it, twenty-five feet I would say to a building that was burning, and it threw light into the building here and back in this area back up here, there was a building burning which was reflecting considerable light in these windows along here. There was windows along in there, and that reflected right into the cell.

MR. HENNELLY: Object to that, and ask that that be stricken and the Jury instructed to disregard it, and a mistrial declared. It is a conclusion and self-serving statement.

THE COURT: Do I understand your testimony, you are testifying where the light was and where it came in?

A. Yes, sir.

THE COURT: As you saw it and observed it on this particular night?

A. That is correct.

THE COURT: Overruled.

Q. Now, what are the floors made of in the hallways there? A. The floors in there are tile, white tile. The walls are white, glazed brick, and all around the floors and the walls are white tile.

Q. Mark this Exhibit 12.

Reporter marked Exhibit 12, a photograph.

Q. Lieutenant, I hand you what has been marked as State's Exhibit No. 12, and ask you if you can tell the Court what that is? [126] A. Yes, sir. This is a hole, or part of a hole dug in the side of the wall.

Q. Is that a picture of the wall? A. This is a picture of the wall in B basement.

Q. Now, did you examine that wall that evening? A. Yes, sir.

Q. That night? A. Yes, sir.

Q. I will ask you if that photograph correctly represents the condition of that wall as you saw it that night? A. Yes, sir.

Q. Now, will you indicate on Exhibit No. 1, where that wall is? A. This wall in this photograph is this wall right here known as the Christian Science Chapel office, this wall right here, and this photograph is just about the middle of it, right in here.

Q. Lieutenant, will you tell us whether or not that photograph, which side of the wall is that photograph taken from? A. This photograph was taken from inside of this small room, and it would be the west side of this wall here.

Q. Be the part of the wall that is outside of B basement? A. That is right.

Q. I believe that is all sir.

[127] *Recross-Examination by Mr. Hennelly*

Q. Just one question Lieutenant, this State's Exhibit 10, which you have already identified, and which has been

introduced into evidence, do I understand correctly that with you standing in the corner of cell No.—which one were you in? A. 17.

Q. Of Cell 17, which was the cell that you found Creighton in, isn't that right? A. That is right.

Q. That all you could see from the man, of the man who was standing in that position in front of Cell 18, was his back, is that right? A. That is right, the back portion of him.

Q. The back portion? A. Standing like this man is here.

Q. There was nobody poking at you, you were just standing there? A. That is right, I was up here looking in.

Q. And you were at that time in good physical condition, you didn't have any broken jaw or anything like that, did you? A. No.

Q. No further questions.

MR. RILEY: That is all. Call Sergeant Rhodes.

[128] SERGEANT JAMES RHODES,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. James Rhodes.

Q. Mr. Rhodes, you are a Sergeant of the Missouri State Highway Patrol? A. Yes, sir, that is right.

Q. How old are you sir? A. Twenty-nine.

Q. How long have you been with the Missouri State Highway Patrol? A. Little over six years.

Q. And where are you stationed? A. Jefferson City, Missouri.

Q. And in the general headquarters? A. Yes, sir.

Q. Are you in the laboratory there? A. That is correct.

Q. Where did you go to school Sergeant? A. I went to Westminister College at Fulton, Missouri.

Q. How long did you go to Westminister? A. Four years.

Q. What did you major in? A. Chemistry.

Q. Did you receive your degree in Chemistry? [129] A. Yes, sir.

Q. After you graduated from Westminister, what did you do? A. I worked for approximately six months with Presnite Engineering Company at St. Louis.

Q. What kind of work did you do? A. I worked in a laboratory.

Q. What type of work are you now doing for the Missouri State Highway Patrol? A. I am assigned to our technical laboratory in Jefferson City.

Q. You make various examinations? A. Chemical analysis.

Q. Chemical analysis? A. Yes, sir.

Q. Have you had any experience in analyzing bloodstains? A. Yes, sir.

Q. Have you read any text books on that question since you graduated from school? A. Yes, sir.

Q. What textbooks have you read?

MR. HENNELLY: For the purposes of the record, I will admit his qualifications in the field in which he concerns himself with in the laboratory.

THE COURT: They can be admitted unless counsel wishes to further qualify him.

Q. If he admits it, admits that he is qualified for that [130] purpose.

THE COURT: Do you admit that he is qualified for making surrological tests?

MR. HENNELLY: Yes, sir.

Q. I hand you what has been marked as Exhibit No. 9, and ask you if you have ever seen that instrument before? A. Yes, I have.

Q. Do you recall when you first saw that? A. Yes, I first saw that on September 30 of last year when Lieutenant Barton brought it to the laboratory.

Q. Did you make an examination of that sledge hammer for the presence of bloodstains? A. Yes, sir.

Q. What, can you tell this jury what you found? A. I found there were extensive red colored stains present on the head of the sledge hammer, and I made examination of those and they were identified as human bloodstains.

Q. Did you analyze those stains according to chemical analysis? A. Yes, sir.

Q. And they were human bloodstains? A. That is correct.

Q. Did you make any identifying marks on that hammer? A. Yes, sir, I did.

Q. That is the same hammer you examined? A. Yes, sir.

[131] Q. That is all.

Cross-Examination by Mr. Hennelly

Q. Sergeant Rhodes, how long have you been with the laboratory? A. Well, ever since I began working for the Highway Patrol.

Q. Now Sergeant, does the Police Laboratory of the Highway Patrol in Jefferson City, does it concern itself also with fingerprint identification? A. Yes, we do fingerprint work.

Q. And I believe you make chemical analysis of various materials which would be subjected to you for the purpose of identification? A. That is right.

Q. Now, I will ask you in this case, did you have an opportunity to make an examination of any materials under the fingernails of one Walter Lee Donnell? A. No, sir.

Q. Now, with respect to your findings, that there was human blood on this exhibit Sergeant, that is the first step in any analysis of any instrument or exhibit, which might

be given to you with material on it which appears to be blood, isn't that right? A. Yes, sir, that is right.

Q. The first thing you do is to determine whether or not it is human blood? [132] A. Well, first, we determine whether or not it is blood, and then if it is, whether it is human blood.

Q. That is right. Now after you determined it was Human blood, am I correct in stating that there are steps which are taken after that in breaking down the blood into the various types under a certain system which you have in the State Highway Patrol? A. Yes, we can check stains to determine the blood group.

Q. Now, what system do you use in determining that, the International Grouping, Sergeant? A. Yes, in grouping the stains, we group them according to the four main blood groups.

Q. Tell, the Court and Jury what those four are? A. The most common group is Group O, and then Group A, and Group B, and Group AB.

Q. Now, within those four classifications, within your experience in the laboratory, in dealing with blood specimens, you can break that down still further, can't you? A. That is the only breakdown that we make on the dry blood stains.

Q. Well, is there such a thing as an M factor, within one of those groups? A. Yes, sir, there are M and N factors.

Q. M and N factors? A. Yes, sir.

[133] Q. So that one might be a type O with an M or an N factor, either present or absent, isn't that right? A. I believe that is correct.

Q. So that would give you, enable you to break it down more than just by making a general analysis with respect to the fact that one might be one of those four groups, isn't that right? A. Yes, sir, that is correct.

Q. All right now, I will ask you with respect to the M and N factors, are there any other methods whereby you could break it down? A. Well now, it depends on the condition of your blood specimen. Now, as I say, we just group on the dry stains as to the four main blood groups. Now on your blood, dry stains, there is the RH factor, and PN factor, and they can't be accurately determined on dry stains, so we just group our four main blood groups.

Q. Do you at anytime, do you ever forward blood either to Dr. Gradwahl in St. Louis to proceed further with a blood examination? A. I don't recall of any cases right offhand sir, no.

Q. Let me ask you this, has it ever been, within your experience that you have broke down a dry bloodstain, beyond the four broad classifications? A. No, sir, I have not.

[134] Q. Can that be done by anybody in your laboratory? A. Not that I know of. We don't do that.

Q. Who is the Lieutenant in charge of the laboratory? A. John Williams.

Q. Does he do blood work also? A. Yes, sir.

Q. Now, I will ask you this, was there ever at anytime in the course of this case, any blood forwarded to you from the body of one Walter Lee Donnell? A. No, sir.

Q. So that your examination of this instrument tells us that there is, first of all, that it is human blood, did you break it down further, can you tell us, can you tell this Court and Jury what blood type is on that hammer, was on that hammer? A. Of the blood grouping determination, it indicated that it was Group O.

Q. Group O? A. Yes.

Q. But you didn't break it down any further with an M and N factor, or anything like that? A. No, sir.

Q. And you didn't forward that to anybody else for the purpose of proceeding further with that? A. No, sir.

Q. Thank you very much Sergeant. No further questions.

[135] MR. RILEY: That is all.

JOE LAMAR,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. J. G. Lamar.

Q. Mr. Lamar, will you speak as loud as you can, because with the fans, it is difficult to hear. Mr. Lamar, you are employed by the Missouri State Penitentiary? A. I am.

Q. And what capacity? A. Superintendent of Identification Records.

Q. Do you have under your control and supervision all of the records pertaining to inmates in the Missouri State Penitentiary? A. I do.

Q. Do you have there the record as to the time they come in? A. I do.

Q. Fingerprints? A. I do.

Q. Photographs? A. Right.

Q. And the time they go out? A. Right.

Q. Are those records that are required to be kept by law? A. They are.

Q. I show you what has been marked State's Exhibit No. 8, and [136] will you tell this Jury what that is? A. That is a photograph of one Walter Lee Donnell.

Q. Did you know Walter Lee Donnell personally? A. I did.

Q. What was his record number? A. 64078.

Q. Did you see Walter Lee Donnell on the night of September 22nd, 1954? A. I did.

Q. Where was he? A. Across the hall from the Deputy Warden's office in the Classification Room.

Q. And what was his condition? A. He was dead.

Q. How did you determine that he was dead? A. Well, his body was beginning to be stiff already. I knew that he was dead.

Q. You say that was across the hall from the Deputy Warden's office, is that inside of the Missouri State Penitentiary? A. It was.

Q. In Cole County, Missouri? A. Right.

Q. And describe what you observed about Walter Lee Donnell's body at that time? A. His throat was cut in two places.

Q. Now, just what two places were they? [137] A. One on each side of the throat.

Q. Now, you say it was cut, now just describe the wound, will you? A. There was a gash, inch and a half or two inches long on each side, and the flesh was wide open.

Q. What else? A. There was a large hole under the right ear.

Q. What else? A. Right side of the head was mashed in as if it had been hit by a heavy instrument.

MR. HENNELLY: Object to that last section as being a conclusion on the part of the witness, no foundation laid for it.

THE COURT: Well, sustained, as to what caused it.

Q. Just describe what you saw, how big was this area that was mashed in? A. Oh, about three or four inches in diameter.

Q. Just show the Jury what area of his head was mashed in? A. The entire right side, from the cheek bone on up past the ear. It was completely mashed in.

Q. And what about his right ear? A. I described it as a hole under the right ear.

Q. What else did you notice about him? A. Three fingers of the right hand was broken, the tip of the index finger was completely severed and mashed away.

Q. Did you take his fingerprints? [138] A. I did.

Q. What was the purpose of taking his fingerprints? A. For identification purposes.

Q. What print did you use? A. I used the left index finger.

Q. Do you have the print you took at that time sir? A. I do.

Q. Will you mark this Exhibit 13?

Reporter marked Exhibit 13, fingerprints.

Q. Mr. Lamar, I show you what has been marked as State's Exhibit No. 13, and will ask you if you know what that is? A. I do.

Q. Is that exhibit a part of the official records of the Missouri State Penitentiary? A. It is.

Q. And is it made in the regular course of business? A. It is.

Q. Is it made at or about the time of the date stated in there? A. It is.

Q. And is it a correct record? A. Yes, sir.

Q. Those records are made and kept under your supervision? A. They are.

Q. At this time we offer State's Exhibit No. 13.

[139] MR. HENNELLY: The Defendant will object and except to the introduction of State's Exhibit 13, for the reason that it is hearsay and it is in violation of the Constitutional Rights of the Defendant to introduce it in evidence at this time. I do not think, in making this objection, that this is the type of evidence that one can bring under the Uniform Business Records Act, and that this is a type of a technical matter which would leave the door open to all types of hearsay and calls for expert testimony. In addition to that, there are some other matters as conclusions on there, which would be grossly hearsay on the right hand side.

THE COURT: Are you offering it for the pupose of identification?

Q. All purposes, all information shown.

MR. HENNELLY: (Out of the hearing of the Jury) This is a dangerous piece of evidence.

MR. RILEY: You subpoenaed it.

MR. HENNELLY: Where is the original, this is a copy.

MR. RILEY: Yes, the original is in Washington. I withdraw my offer at this time.

MR. HENNELLY: Is the original of this exhibit in Washington on file with the Federal Bureau of Investigation?

Q. Mr. Lamar, is the original copy of this exhibit on file with the F.B.I. in Washington? A. It is.

[140] Q. You sent it there? A. Yes, sir.

Q. This writing on here, is that on the original copy? A. Yes, on the original, that is the carbon copy of it.

Q. Judge, I will withdraw my offer at this time.

THE COURT: This matter here, where I have my finger is what?

A. A print of the left index finger of Walter Lee Donnell.

MR. HENNELLY: I want to ask that that be stricken for the reason that that incorporates certain sections of hearsay as to whose it is, and I think that is hearsay and I think that the Jury having heard it, if they heard it—

MR. RILEY: He testified he put it on there.

THE COURT: The last part of it may be stricken at this time as to whose it is. What is it, that is what I want to know. A. A fingerprint.

Q. It is a fingerprint? A. Yes, sir.

THE COURT: Now, who put that fingerprint on there? A. I did.

THE COURT: You did?

A. Yes, sir.

THE COURT: And from whose hand did you make the print?

A. Walter Lee Donnell's.

THE COURT: And you knew Walter Lee Donnell personally? [141] A. I did.

THE COURT: And then is this the fingerprint of Walter Lee Donnell that you put on there? A. It is.

THE COURT: All right.

MR. RILEY: Mr. Lamar, are you acquainted with Dr. Shull? A. Yes, sir.

Q. At anytime did you identify the body of Walter Lee Donnell to Dr. Shull?

MR. HENNELLY: Object to the form of that question for the reason that is leading and suggestive, and contains certain elements of hearsay and is a conclusion, and ask that it be stricken and the Jury instructed to disregard it and a mistrial declared.

THE COURT: Overruled, and I think the time and place should be fixed.

Q. On September 25, 1954, in Nashville, Tennessee, did you identify the body of Walter Lee Donnell for Dr. G. Donald Shull?

MR. HENNELLY: Object, if Your Honor please, for the reason that this is hearsay and that this is a matter which is something done, not in the presence of this Defendant, and while use of the word identify is a conclusion, and it has been held in other cases that it is a matter which has to be done in the presence of the Defendant, and he has to acquiesce [142] in it some way. I think they may show it in a different way, but to use it under those terms, it is very bad form, and I think it is illegal and improper, and I ask that it be stricken.

THE COURT: The objection is overruled. I think more of your circumstances ought to be shown before your question is asked. Was this witness there? He has testi-

fied that he knows, or knew during his lifetime, Walter Lee Donnell. Now, was Donnell's body there, did he see it and identify it, I think those ought to be asked before the designation to anybody else is made.

Q. On September 25, 1954, in Nashville, Tennessee, did you go to Nashville, Tennessee, on that date? A. I did.

Q. And who was with you? A. Dr. Shull, Mr. Riley, the Cole County Prosecutor.

Q. Now, did you see a dead body there? A. I did.

Q. And whose dead body was it? A. Walter Lee Donnell.

Q. And is that the only body you saw? A. That is right.

Q. And when you were there and observed that body, where was Dr. Shull? A. He was present.

[143] Q. Did he view the body? A. He did.

Q. Were you with Dr. Shull at all times? A. I was.

Q. And whose body was it that Dr. Shull viewed? A. Walter Lee Donnell's.

MR. HENNELLY: Object to that as being a conclusion.

THE COURT: Overruled.

Q. Whose body was it that Dr. Shull viewed? A. Walter Lee Donnell's.

Q. Did you observe Dr. Shull doing anything to the body of Walter Lee Donnell? A. I did.

Q. What did he do? A. Assisted in holding an autopsy.

Q. And did you see him cut the body open? A. I did.

Q. Did you see him examine the head? A. I did.

Q. Was that opened? A. It was.

Q. Were you there all the time? A. I was.

Q. Dr. Shull there doing the work? A. He was.

Q. And you say it was the body of Walter Lee Donnell? [144] A. It was.

Q. Is that the same Walter Lee Donnell that you saw dead in the Deputy Warden's office in the Missouri State Penitentiary? A. It was.

Q. Is that the same one you have identified in Exhibit No. 8? A. It is.

Q. I believe that is all Judge.

Cross-Examination by Mr. Hennelly

Q. Mr. Lamar, are you acquainted with a Mr. McDowell at the Missouri State Penitentiary? A. Yes, sir.

Q. What are his duties up there? A. He is, most of the time, in the identification bureau.

Q. Is he the man who takes the fingerprints from people? A. He is not.

Q. Does he take any fingerprints? A. Not to my knowledge.

Q. You take all the fingerprints? A. I do not.

Q. Now how many, in the coure of time that you have been working for the Penitentiary, approximately how many fingerprints have you taken? A. Well, that is impossible to say. I have been there fourteen [145] years.

Q. Have you taken a thousand? A. Oh, easily that many.

Q. I see. And this one you took yourself, is that right? A. I alsways take the dead ones.

Q. Sir? A. I always take the deceased.

Q. You always take the deceased ones? A. Yes, sir.

Q. Now, I will ask you Mr. Lamar, do you incorporate into that file, and into the records of the Penitentiary, the official death certificate of the County? A. We do not.

Q. In other words—strike that. How many people would you say have died in the Penitentiary in the last two or three years? A. It would just be a guess, I would say two dozen.

Q. And do you incorporate into the files of any of those people the official death certificate for Cole County? A. Not the official death certificate. Their form is always incorporated.

MR. RILEY: If the Court please, I would like to object to that, Cole County doesn't have any death certificates, the County of that size has no Bureau of Vital Statistics.

THE COURT: I am not familiar with that statute. I know the State of Missouri has a Bureau of Vital Statistics. Sustained [146] as to Cole County's death certificate. St. Louis and Kansas City I presume are probably the only two that have it.

Q. Have you incorporated into the files of any of those who have been deceased, the official State of Missouri death certificate? A. We have not.

Q. Will you mark this Exhibit A.

Reporter marked Exhibit A, a death certificate.

Q. I am going to hand you what has been marked for the purpose of identification, as Defendant's Exhibit A, and ask you if you know what that is?

MR. RILEY: If you know.

Q. If you know? A. I don't know.

Q. You don't know? A. Without reading it.

Q. Sir? A. I don't know.

THE COURT: Is that exhibit marked Exhibit A?

MR. EHLERS: Yes, sir.

Q. I will ask you if that isn't a death certificate sir? A. That is what it purports to be, yes, sir.

Q. And is that a death certificate of one Walter Lee Donnell? A. It is.

Q. I am going to ask you if that Death Certificate doesn't reflect that he—

MR. RILEY: If the Court please, what that death certificate reflects, is on the death certificate and I object to him saying [147] what it reflects.

THE COURT: Sustained.

MR. RILEY: Until it has been introduced.

Q. Very well. Have you removed from any of the official records of Walter Lee Donnell, any death certificate? A. We have not.

Q. You have never seen the original of that, nor have you ever filed within your official records, any copy such as that one? A. That has never been done in any case.

Q. Hasn't been done in this one, is what I am asking you? A. That is right.

Q. All right. But in any event, at the time you examined that body, you didn't see any evidence of any bullet wound in him then, did you, in Mr. Donnell? A. None whatever.

Q. No bullet wounds? A. No.

Q. Did you have any conversation with the Sheriff of Cole County with respect to the deceased? A. I did not.

Q. Did you have any conversation with anyone with respect to an official death certificate in the matter? A. I did not.

Q. Very well. Now then Mr. Lamar, just when did you go to [148] Nashville, Tennessee? A. The afternoon of September 25, 1954.

Q. The afternoon of September 25? A. Right.

Q. And how did you get down there? A. By airplane.

Q. And did you catch that plane in Jefferson City? A. I did.

Q. What plane did you take down there? A. The Highway Patrol plane.

Q. Who went with you besides Mr. Riley and the doctor? A. Dr. Shull and Mr. Riley and the pilot of the plane. I believe his name is Jones.

Q. What time did you arrive down in Nashville? A. The Funeral Home at 3:15.

Q. 3:15? A. 3:15 P.M.

Q. 3:15 P.M.? A. That is right.

Q. And did you land at some airport down there or something? A. We did.

Q. And how did you get from the airport out to the Funeral Home? A. We took a cab.

Q. And do you know what time it was that you arrived at the airport? A. No, not exactly.

[149] Q. Did you have to make out any statement or any certificate of any kind, which has been filed with the State Highway Patrol, that you were a passenger on that trip? A. I did not.

Q. Have you brought with you—strike that. How long did you remain down in Nashville? A. All night.

Q. And where did you stay? A. At the hotel.

Q. What hotel?

MR. RILEY: If the Court please, I don't know that that is material to any issue in this case.

The Court: Well, it is cross-examination.

MR. RILEY: Go ahead then.

Q. What hotel did you stay at? A. I believe it was the Jackson.

Q. You registered there under your name? A. That is right.

Q. Have you brought with you Mr. Lamar, some records of your own with respect to any expenditures which were made by you, to the State of Missouri, during the month of September or October, of 1954? A. I brought exactly what you subpoenaed.

Q. And where are they? A. In the other room, I didn't bring them in here.

Q. May we have just a moment to get them please?

[150] THE COURT: I don't believe you subpoenaed a September and October and November, but you may go get them.

Q. May I see them? A. What is it you want to see?

Q. I want to see any voucher of money—

MR. RILEY: I can't hear the defendant's questions, or I mean counsel for defendant's questions.

THE COURT: I don't know that it was exactly a question. I think it was, he was directing him to something in there that he wanted to see.

Q. Let me ask you this, were you reimbursed in any way for any of the money that was spent on this trip? A. I was not. I didn't spend anything.

Q. Who paid the hotel bill down there? A. Dr. Shull I think paid the bill. I am not sure.

Q. And can you tell us what street that hotel was on? A. I cannot.

Q. You say that it was, to the best of your knowledge, the Jackson Hotel? A. I believe that is right, yes.

Q. How long did you stay down there Mr. Lamar? A. I think our plane left ten minutes after twelve Sunday afternoon the 26th, for a return trip to Jefferson City.

Q. When did you return back in Jefferson City? A. To the best of my recollection, around three or three-thirty, [151] something like that.

Q. Three or three-thirty Sunday afternoon? A. It was Sunday afternoon, the exact time I don't remember.

Q. Were you marked as being on detached service out of the Penitentiary at that time? A. Saturday and Sunday are my days off there.

Q. So that there is—is there anything in the records at the Missouri State Penitentiary to indicate that you were out of the city? A. Not to my knowledge.

Q. But the records will reflect that you had registered in at the hotel down there? A. That is right.

Q. And there was no expenditures of any kind paid back to you, either for meals or hotels or for anything, is that right? A. None whatever.

Q. I have no further questions Your Honor.

Redirect Examination by Mr. Riley

Q. Mr. Lamar, this exhibit, State's Exhibit No. 13, is that the only death certificate that you have in the Penitentiary files? A. Of Walter Lee Donnell.

Q. Of Walter Lee Donnell? [152] A. Yes.

Q. Now, you don't work on Saturdays or Sundays, do you? A. Not unless on special duty.

Q. I mean you don't have to check out or in the Penitentiary, or give the Penitentiary notice if you want to go somewhere? A. No.

Q. I believe that is all.

MR. HENNELLY: No further questions at this time Your Honor.

THE COURT: This, which you have designated as a copy of the handwriting on Exhibit 20, is that your handwriting?

A. It is not.

THE COURT: Exhibit 13, excuse me.

A. No, sir.

Q. Did you see anyone write that? A. I did not.

Q. You did not? A. No, sir.

THE COURT: All right, that is all.

MR. RILEY: Call James Eynard.

JAMES EYNARD,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. James Eynard.

Q. And where do you live Mr. Eynard? [153] A. Jefferson City, Missouri.

Q. And by whom are you employed? A. Duly Funeral Home.

Q. Were you so employed on September 22nd, 1954? A. I was.

Q. And I will ask you if you were at the Penitentiary in Jefferson City, on the night of September 24? A. I was.

Q. And what did you go there for? A. To remove the bodies of the inmates that died.

Q. How many bodies did you remove? A. Three.

Q. Did you remove the body of Walter Lee Donnell? A. I did.

MR. HENNELLY: Object to that as calling for a conclusion and must necessarily be based on hearsay, and no proper foundation at this point has been laid for such a question.

THE COURT: Sustained at this time. The witness wouldn't have any personal knowledge, it would be hearsay.

Q. I show you Exhibit No. 8, what has been marked as Exhibit No. 8, and will ask you if you can tell this Jury whether you have ever seen that man before? A. I have.

Q. And when? A. On the night of September 22nd.

[154] Q. Where? A. In the Administration Building in the Missouri State Prison.

Q. What condition was he in? A. He was dead when I saw him.

Q. And just describe the condition as you saw it? A. Well, when he was laying there, he was pretty bloody, and they had him laying on his back on the floor.

Q. And what was his condition, what was the condition of his head? A. On his right side, his head was caved in.

Q. What else did you observe? A. An on below his ear lobe, here, the lower piece was torn loose.

Q. What about his throat? A. Well, he had two gashes, one on each side of his throat, one on one side and one on the other.

Q. You say that the body you examined was the body of the man pictured in Exhibit No. 8? A. It was.

Q. And what was his name, did you know him as Walter Lee—

MR. HENNELLY: Object again, that would be a conclusion that would necessarily be based on hearsay.

THE COURT: Sustained.

Q. What did you do with that body? [155] A. We taken him to the funeral home and undressed him and then embalmed him.

Q. What did you observe about his body before you embalmed him? A. Well, he had lacerations all over his body and on his left side, there was five wounds on his left side, above his heart, and then he had four or five in the back, and in the back they looked like they could have been stab wounds.

MR. HENNELLY: Object to that section.

THE COURT: Sustained, being a conclusion.

Q. Don't tell what they could have been, just describe them. What was the size of them and the shape? A. In the back they were larger than in the front.

Q. What part of the back were they? A. In the back.

Q. Were they on the left side? A. On the left side, around the rib section.

Q. Around the rib section? A. Yes, sir.

Q. Now, what part of the body on the front was the wounds? A. Right here above the heart, in this area.

Q. Now, I direct your attention to the area in the back and where were those wounds? A. Well, approximately, I would say they were pretty well in the same area in the back.

[156] Q. Were they— A. Below the shoulder blade there.

Q. Now, the wounds in the front, what size were they? A. They were smaller wounds than the ones in the back, and in the back they were long wounds.

Q. What shape were the ones in the front? A. Well, they were more round.

Q. And what were they in the back? A. They were long.

Q. How long? A. Oh, I would say half an inch, maybe three-quarters of an inch.

Q. And how wide were they? A. Well, they weren't too wide, they were together, they gapped open.

Q. How long have you been an embalmer? A. I have been an embalmer about three years.

Q. Have you embalmed bodies—strike that. You have had an opportunity to examine wounds made by knives and other sharp instruments? A. I have.

Q. And can you tell this Jury, in your experience, what, in your opinion, made the wounds in the back of of this body?

MR. HENNELLY: Excuse me, I want to object if your Honor please, I don't think based upon the evidence thus far, that this witness is qualified to permit him to testify under those [157] circumstances so far as to what caused those wounds. It would be a conclusion on his part and would be an invasion of the province of the Jury.

THE COURT: Overruled.

Q. Go ahead Mr. Eynard.

THE COURT: What kind of wounds were the wounds on the back?

A. I would say, according to my experience, they would be, would have been made with a knife.

MR. HENNELLY: Same objection, and ask that the answer be stricken and the Jury instructed to disregard it, and a mistrial declared.

THE COURT: Overruled, and the request is denied.

Q. Do you have any opinion as to the wounds in the front? A. Well, they could have been made by any round instrument.

THE COURT: He asked you if you had any opinion, you can answer that yes or no.

Q. If you do have an opinion or if you don't? A. Yes.

Q. What, in your opinion—

MR. HENNELLY: I am sorry, I didn't get a chance to object, the same objection for the same reason, no proper groundwork laid for such a question.

THE COURT: Overruled. All right, you may answer.

A. I would say some kind of a round instrument.

Q. You embalmed the body there? [158] A. Yes, sir.

Q. On what date? A. September 23rd.

Q. What happened to the body then? A. We shipped it to Nashville, Tennessee.

Q. Did you observe the rest of his body, what was the condition of the rest of his body? A. I couldn't say.

Q. Well, I mean did you see any other marks or wounds on the rest of his body? A. No, I didn't.

Q. Any on his legs? A. There were several—

MR. HENNELLY: Object, if your Honor, please, this is an attempt to rehabilitate and cross-examine his own witness in view of the prior questions and answers.

THE COURT: Well, counsel may direct his own witness as to parts of the body if he desires to. The objection will be overruled. However, I don't think the questions should become leading. I think you have a right to direct him to either refresh his memory or call his attention to any particular part of the body. He is testifying evidently from memory.

MR. HENNELLY: Same objection.

THE COURT: Overruled, and he may proceed.

Q. Go ahead, if you remember. [159] A. There several wounds on his legs.

Q. You remember what kind? A. I don't remember distinctly. They were wounds about the size of a quarter I would say.

Q. I believe that is all.

Cross-Examination by Mr. Hennelly

Q. Mr. Eynard, how old a gentleman are you sir? A. Twenty-four.

Q. And you began embalming then when you were twenty-one, is that right? A. Twenty-one.

Q. And do you do some work for the State of Missouri, up there in Jefferson City? A. I haven't, other than this.

Q. Sir? A. I haven't, other than this.

Q. You haven't other than this one? A. No.

Q. Can you tell this Court and Jury approximately how many bodies you have embalmed in the three years you have been doing it? A. That is hard to say. I could get at it about, maybe two hundred or two hundred and fifty.

Q. Two hundred or two hundred and fifty? A. Yes, sir.

[160] Q. And of those two hundred or two hundred and fifty, how many of them have died from stab wounds? A. About three or four.

Q. Three or four? A. Yes, sir.

Q. And so that your statement with respect to how this man died, is based upon your having seen three bodies in which people have been stabbed?

THE COURT: He didn't testify how the man died. He didn't testify what killed the man.

Q. I will rephrase the question Your Honor.

THE COURT: He testified that in his opinion, the wounds on the back were knife wounds, and the wounds on the front were round wounds by some round instrument.

Q. Very well. Then your opinion with respect to the wounds in the back, that is based upon your examination of three people who have been stabbed, is that right? A. I would say three or four.

Q. Three or four? A. Yes, sir.

Q. And that is true of the ones in the front, is that right? A. Yes, sir.

Q. Then you think under those circumstances, that you might be mistaken about it sir? A. Not hardly.

Q. You couldn't be? A. I don't believe.

Q. Have you examined any records of the Prosecuting Attorney, [161] or of the State Highway Patrol, before you came down here sir? A. No, sir, I have not.

Q. Have you seen any of their records in the last three or four months? A. No, sir.

Q. And so that everything that you are testifying to here today is from your memory, with respect to what you saw on September 23, 1954, is that right? A. Yes, sir.

Q. Do you know about how much that man weighed that you embalmed? A. I would say between one hundred and thirty and one hundred and forty pounds.

Q. And if I understand you correctly, you saw some marks on his legs which were about the size of a quarter, you saw some marks in the front and some in the area of the heart, and some marks in the back, in back of the heart area, is that correct? A. Yes, sir.

Q. And then you saw something, a mashed in place on his head, is that right? A. His right side of his temple was crushed.

Q. The right side? A. Yes, sir.

[162] Q. Are you sure it wasn't the left side, but the right side? A. No.

Q. And did you see any other marks on him? A. He had quite a few marks on him, but I don't remember right off.

Q. I see. I have no further questions Your Honor.

MR. RILEY: That is all. Call Dr. Schull.

DR. G. D. SHULL,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. State your name please. A. Dr. G. D. Shull.

Q. How old are you Dr. Shull? A. Thirty-nine.

Q. Where do you live? A. Jefferson City, Missouri.

Q. And after you graduated from high school, where did you go to school? A. Two years at Jefferson City Junior College and a year later at the State University, three years at the University of Missouri, and two years Northwestern University.

Q. And where did you receive your medical education? A. Northwestern University, and University of Missouri.

Q. And when did you graduate sir? A. 1942.

Q. Where did you intern? A. City Hospital in [163] St. Louis.

Q. How long? A. Nine months there and three months at the Navy Hospital in San Diego.

Q. How long were you in the Navy sir? A. Forty-four months.

Q. And were you in the Navy as a medical doctor, commissioned as such? A. Yes, sir.

Q. During the time you were in the Navy, did you have an opportunity to observe and treat various types of wounds? A. Yes, sir.

Q. Did you have an opportunity to observe and treat gunshot wounds? A. Yes, sir.

Q. And cuts? A. Yes, sir.

Q. At various times? A. Yes, sir.

Q. Doctor, I will ask you if, on September 25, 1954, you went to Nashville, Tennessee? A. I did.

Q. Who did you go with? A. Mr. Lamar and the pilot of the Highway Patrol plane and Mr. Jones.

Q. Dr. Shull, you are practicing medicine in Jefferson City [164] now? A. Yes, sir.

Q. In addition to that, do you have any connection with the Missouri State Penitentiary? A. I am sir, I am in the Algoa branch, the Intermediate Reformatory, and the Women's Branch.

Q. Now, did you observe a body in Nashville, Tennessee? A. Yes, sir.

Q. And how many bodies did you observe? A. Just the one.

Q. And was Mr. Lamar there? A. Yes, sir.

Q. Did he identify that body to you?

MR. HENNELLY: Object to that for the same reasons heretofore stated Your Honor.

THE COURT: Well, he may answer that question yes or no, the objection is overruled.

A. Yes.

Q. And whose body was it?

MR. HENNELLY: Object to it, if Your Honor please, for the reasons heretofore stated, and for the reason that it is hearsay and a conclusion and no proper foundation laid for such a question.

THE COURT: The objection will be sustained as to the form in which the question was asked. I will permit this witness [165] to testify who Mr. Lamar identified the body as.

Q. Who did Mr. Lamar identify the body as?

MR. HENNELLY: Same objection.

THE COURT: Overruled.

A. That of Walter Lee Donnell.

Q. Did you make an examination of that body? A. I did.

Q. And what type of an examination did you make? A. Post mortem or autopsy examination for the purpose of determining the cause of death.

Q. Now, will you tell this Jury just what you found? A. Because of the multiplicity of wounds, may I be permitted to use my notes?

Q. You may use your notes to refresh your memory and then testify from your memory. Now just a moment, these notes that you have there in your hand, are those the notes that you made? A. Yes, sir.

Q. When did you make them? A. I made them at the time in longhand and then had my secretary transfer them over to typewritten form on my return.

Q. Are the typewritten notes the same as your longhand notes? A. Yes, sir.

Q. All right, go ahead.

[166] MR. HENNELLY: Just for the purpose of the record, if Your Honor please, I would like to object for the reason that the Doctor is obviously reading them and I think for the purpose of refreshing his memory, he may examine them and testify independently of the notes. If he reads them, I say that is hearsay.

THE COURT: Well, I don't know, he just asked the question if he may use his notes, or his report or whatever he has to refresh his memory, and the Court will permit him to do that, but his testimony should be his memory and recollection of the testimony, and he may use this to refresh his memory and where he is referring to matters of measurement and things of that kind, why certainly he has a right to read off those figures. That would be part

of his refreshed memory. It may be a little difficult for you to do that Doctor, but you should testify from your recollection and you should use your notes only to refresh your recollection.

Q. All right Doctor, from your memory, did you examine the head of this man who Mr. Lamar identified to you as Walter Lee Donnell? A. I did.

Q. What condition did you find there? A. There was a severe mashed in, or compressed area in the right side of the face approximately just underneath the right eye, that extended back, involving the right ear with [167] separation of the lower part of the ear, lower part of the ear was torn away from the body about a third of its normal attachment area. There were two cuts about the neck, over the great vessels of the neck, one on each side. There was a little, or smaller cut on the left cheek. Those were the outstanding findings of the head and neck.

Q. Now, did you make any examination of the interior of the head, the brain structure? A. Yes, sir.

Q. Tell the Jury how you did that? A. Well, after the surface marks were all identified and recorded, then the scalp was cut across and the top part of the skull was removed and the brain was pulled back to show the floor of the skull or the brain case, the right front part of the lower part of the skull, or the floor of the skull brain lining, and there was multiple fractures in this area which were described as an egg shell type fracture, because of the multiplicity of fractures. It was not a single line, it was just a multiple crushing type of fracture, in which there were many small fragments. There was a fracture on the opposite side of the skull in the back that was more of a linear nature that started in about the middle part of the skull and extended to the left and backward to the back part of the skull on that side. The brain itself over the area overlying the area of this compression fracture, had received [168] about—

MR. HENNELLY: I can't hear you Doctor.

A. I think those were the major findings inside of the skull.

Q. Was the brain itself damaged? A. Yes, I just stated that it had this red discoloration or hemmorhage in the part that was overlying the fracture area in the front part of the skull.

Q. Now Doctor, from your experience and knowledge, as a medical doctor, can you tell this Jury whether or not the condition you found there, the crushing of the skull would be a mortal wound? A. Yes, I believe it would.

Q. Now, did you make any examination of his chest area? A. Yes, sir.

Q. What did you find? A. The examination was first done on the outside of the surface of the body, and there were five stab wounds on the left side of the chest in front overlying the heart, and lung area, there were several smaller breaks in the skin or puncture wounds, or lacerations or stab wounds, however you wish to describe them in the upper left shoulder and armpit region. There were, I believe four stab wounds or lacerations in the back on the left side, and feeling the skin over this area revealed evidence of air underneath the skin which had escaped from the chest cavity into the skin [169] or tissue below the skin, and about the area of these wounds in the back.

Q. Now, did you make any examination as to the depth of the wounds from the front of the chest? A. The chest cavity was opened then.

Q. What do you mean by the chest cavity was opened? A. Both—by removing the front part of the breast bone and the front part of the ribs on each side in a diamond shaped fashion across the breast bone was removed and each lung cavity examined. That is, I ex-

amined both the right and left side of the lung cavities and the heart area that is overlying that, the left lung was found to be collapsed and there was evidence of injury to the sack overlying the heart. There were two wounds in the sack that surrounded the heart and a probe was placed in the wounds from the outer part, where we found the wounds on the outside, and these corresponded with the chest cavities, these wounds corresponded to the wounds found in the heart, so we determined that two of the wounds of the five stab wounds that we found in front, had entered the heart cavity.

Q. Had they entered the heart itself? A. Yes, the heart sack was then opened, and the heart itself was opened, and the probe was replaced and it was found that the wounds of the heart, the two wounds in the heart went through both the front and back walls of the heart, had gone [170] completely through the heart from the back. Then by lifting the heart from its sack, if my memory serves me correctly, two of the wounds from the back had apparently gone through the sack surrounding the heart and had penetrated the heart from the rear, but had not gone through the heart. They had gone into the heart, but not through it.

Q. Now, what do you mean by probing Doctor? A. Well, we used a rather long metal wire like instrument that has a blunt end on it, and it is inserted in the opening and from the outer opening and it is used to determine the course and direction of wounds to see where they go, I mean which direction they go, or whether they correspond to wounds from the outside.

Q. Now Doctor, from your experience and knowledge as a medical doctor and in examination of this body, can you tell this Jury whether or not the wounds which entered Donnell's body from the front would be considered a mortal wound? A. Most certainly.

Q. Now, what about the wounds that entered in the heart area from the rear, would they be considered a mortal wound? A. In all probability. I mean they may survive it, but if the heart muscle itself is cut, there is likelihood of death.

Q. Doctor, did you probe all of the wounds there around the heart and lung area? A. Yes, sir.

[171] Q. Did you find any of those wounds that went completely through the body? A. No, sir.

Q. Doctor, from your examination, can you tell this jury what type of instrument would have caused the wounds in the front over the heart area? A. Well, I am unable to determine the type of instrument other than to say it was apparently a small diameter or width blade. Just as a rough example, it may have been the width of the ordinary pocket knife blade. I mean from the cutting edge to the back edge, as far as width is concerned, as far as the other diameter is concerned, it was roughly about the same appearance and did not appear to be necessarily, I mean as far as describing the type of instrument, I am unable to say that it was a perforating instrument such as a long knife blade may be.

Q. How long an instrument would have been required to inflict the wounds from the front? A. Roughly I would say the effective length was—probably be, the instrument must be at least four inches, between four and five inches.

Q. Now, how long would you say the instrument was that inflicted the wounds from the rear? A. Roughly the same, it was about the same. The heart is situated more or less in the central part of the body from the [172] front to the back, and however the wounds from the back, did not penetrate to the depth or at least as far as the heart was concerned, as they did in the front.

Q. Now, how large an instrument would have been, would you say was used to inflict the wounds from the back? A. Well, the opening on the skin in the back was approximately I would say, roughly half an inch in its longest diameter, and appeared more or less as slits as far as the skin was concerned, and maybe there was an eighth of an inch separation there and approximately half an inch in slit like length.

Q. Doctor, did you make any examination to see whether or not there were any gunshot wounds on this body? A. Yes, sir, from the standpoint of retained metal fragments, are probably the best methods of determining gunshot wounds. Usually when any type of gunshot wounds, unless it is some steel jacket bullet, there will be missiles scattered, bits of metal scattered, and because of that, X-rays were taken of the body, taken of the skull region and of the chest where most of the injuries appeared to have occurred, and we determined from that, that there was no evidence of any metal fragments there. There was no appearance of a wound on the outer surface of the skin that would suggest that of the usual gunshot wound.

Q. Did you examine it in particular to determine whether there were any gunshot wounds? [173] A. Yes, sir, that was the purpose of the examination.

Q. Did you find any injuries on his limbs? A. Yes, sir, as I recall, the right index finger, the tip of the right index finger had been torn away. There was some bruises scattered over the back of the hand, back of both hands, and bruises on the back of the right forearm, and there was bruises of the right shin area, on the front part of the right leg, that were in a linear fashion, started just above the ankle and there were more bruises, as I recall, on the right shin up toward the knee.

Q. Doctor, I will show you what has been marked as State's Exhibit No. 9, can you see that there? A. Yes, sir.

Q. And I will ask you if that instrument could have caused the injury to Donnell's skull, if in your opinion it could have caused it?

MR. HENNELLY: I am going to object, if Your Honor please, for the reason it is too vague, indefinite and speculative and for the further reason that it assumes something that is not in evidence.

THE COURT: What isn't in evidence?

MR. HENNELLY: The fact that he was hit on the head with it Your Honor.

THE COURT: Well, overruled. You may answer.

Q. Go ahead. [174] A. The question was—

Q. If that instrument—

THE COURT: If the injury you found upon the right side of the head of this body that you examined, could have been caused by the instrument such as Exhibit 9?

A. Yes, sir.

Q. Now, which part, for the record, that instrument has two ends to it, which end would have caused the injury to Donnell's skull? A. From the appearance of the injury it would be a blunt end, such as the end facing me.

Q. Would you point it out to the Jury? A. This would be a larger, a flat surface area.

Q. At this time Your Honor, we offer State's Exhibit No. 9 into evidence.

MR. HENNELLY: I will object for the reason that the proper foundation has not been laid for its introduction, and for the reason that it is hearsay, and to introduce it under these circumstances would be in violation of the constitutional rights of the Defendant.

THE COURT: The objection is overruled.

MR. HENNELLY: Very well.

THE COURT: It may be received in evidence.

Exhibit 9, being the sledge hammer, and same being too large to attach to the transcript of the record, a photograph [175] of same is attached to the original of this transcript.

MR. RILEY: I believe that is all at this time.

Cross-Examination by Mr. Hennelly

Q. Doctor, if I understand it, this body that you examined at Nashville, you especially looked for gunshot wounds, is that right? A. Yes, sir.

Q. And if I understand correctly, based upon your experience, that this body that you examined down in Nashville, there weren't any gunshot wounds in it? A. I feel safe in saying that there were no gunshot wounds.

Q. Now, prior to the time that you went down there, were you given any of the death certificates or anything to study before you went down there? A. No, sir.

Q. Did you after you returned, did you incorporate your findings into some type of a report? A. I did. I had the autopsy findings, as I have in these notes, which I carried here with me, typed up into three copies, and a copy was sent to the Director who requested me to go down and perform the autopsy, and a copy to Mr. Riley, and a copy was placed in my own file.

Q. The one copy you say went to Mr. Riley and when you say the Director, you mean the Director of the prison, sir? [176] A. Director of the Department of Correction at that time.

Q. Who was that, at that time? A. Mr. Thomas Whitecotton.

Q. He is no longer in that position, is he? A. He is not.

Q. Very well. Now, I am going to ask you, up until that time, how many autopsies or post mortems had you performed Doctor? A. During my training period, while

still in school it was required to do twenty-five, and then scattered since that time, approximately another twenty-five or thirty.

Q. I see. Do you make any autopsies for the Cole County, or for the State of Missouri, or are they part of your duties sir? A. Not except as in line as a physician, in which there is some question as to the cause of death, and at which time I have performed autopsies to determine the cause of death.

Q. Now then Doctor, I am going to ask you, are you familiar with rigor mortis? A. Yes, sir.

Q. Doctor, how long does it take for rigor mortis to set in a body? A. Well, there is a good deal of variation in that, it depends entirely upon the time, the temperature factors have a great deal to do with it. It isn't I would think it would be difficult [177] to state a flat rule, and say rigor mortis occurred at such and such a time, in hours and minutes, but as an average, or as a rough guess, we would say approximately two to three hours.

Q. Have you ever seen a body wherein rigor mortis set in in less than three hours, you personally? A. I personally?

Q. Yes. A. I don't recall.

Q. Within your experience, what is the quickest time that you have seen rigor mortis set into any body? A. Well, to define rigor mortis, just a bit further here, maybe rigor mortis is a stiffening of the muscles here which may be primary. It may even occur before death in people that are frozen.

Q. You say you may have it, it may appear before death actually occurs? A. At least the extremities and muscles and blood congeals in the muscles, and they no longer respond, and the muscles are stiff, and therefore you could have a stiffening, you could have rigor mortis

probably before, I mean by the term of rigor mortis, the rigidity of the muscles.

Q. Doctor, is it your testimony that there are times when rigor mortis sets up prior to death? A. We say rigor mortis as defined by stiffened muscles, in which the muscles are unable to move, if the body is frozen or [178] stiff, and the body is frozen by outside temperature, I mean frozen in the sense of being exposed to very low temperature over a long period.

Q. Well, let's take a dead body, how long does it take a dead body, for rigor mortis to set in under just normal conditions? A. Well, actually I don't know whether I am qualified to answer that.

Q. Have you in your experience, ever known of a dead body where rigor mortis has set in, at anytime less than three hours? A. From my personal knowledge?

Q. Yes. A. Yes, I think so.

Q. When was that Doctor? A. Well, I recall during intern training at the City Hospital in St. Louis, part of my service was at the Infirmary in St. Louis, and we spent sometime there, and there was quite a number of old people, and many of them were bedfast for long periods before death, and I recall one old lady that I was called to see, we were on the premises at all times, we lived there, and the nurses recorded her not breathing around eleven-thirty in the morning, and I was called to pronounce her dead, and it was after the lunch hour, which was probably twelve-thirty or twelve forty-five, and rigor mortis was present there.

[179] Q. Well Doctor, let's take a body, take into consideration a body that you saw down in Tennessee, taking into consideration the age and the height and the weight of that body, how long would you say it would, in the normal course of events, take that body for rigor mortis to set in? A. Well, I don't know whether I can

answer that satisfactorily at all, but I think it would definitely have something to do with the amount of blood present, if a body was more or less without a quantity of blood, it might take considerably longer for rigor mortis to set in, than it would if the body had had its normal full blood supply.

Q. Let us assume that the body had four stab wounds in the front and five in the back, and they were through and through the heart, and taking that into consideration Doctor, and taking further the fact that there were cuts along both sides of the neck, and that they had caused considerable bleeding, would you say that it would take longer for that body, for rigor mortis to set into that body? A. Yes, I would say yes.

Q. And I will ask you, if normally, within your post mortem work, and in autopsy work, whether pathologists and doctors who concern themselves exclusively with that type of work, would average rigor mortis to set in at approximately four hours, if you know that? A. I don't know.

[180] Q. All right. Now then Doctor, this body that you examined had already been embalmed, is that correct? A. Yes, sir.

Q. Now, I am going to ask you Doctor, with respect to the wounds that you found on both sides of the neck, you did find them on both sides of the neck? A. Yes, sir.

Q. Doctor, did any of those sever the jugular vein, or any of the veins which went up the side of the neck? A. We re-opened that area to look, and apparently there was no damage to the large vessels.

Q. So that those wounds on the neck, on both sides of the neck, were not in your opinion, fatal wounds, is that right? A. Not immediately fatal, no.

Q. Now Doctor, did this man suffer from any hemmorhage of the skull, any subdural hemmorhage? A.

Subdural hemmorhage, you mean hemmorhage which is outside the membrane that is just inside of the skull?

Q. Yes. A. There was no evidence between the bony part and the membrane, that is, in direct contact with the bone of the skull.

Q. How big a man, how tall a man would you say this body was that you examined? If you recall? You may refresh your memory. A. It was estimated at that time, his height was estimated at [181] five feet and ten inches.

Q. And his weight? A. Approximately one hundred and sixty-five pounds.

Q. One hundred and sixty-five pounds? A. Yes.

Q. The man that you examined then was at least thirty or thirty-five pounds more than one hundred and thirty pounds, and there was no gunshot wounds in it? A. The question again?

Q. The body that you examined was a body that in your opinion weighed approximately one hundred and sixty or a hundred and sixty-five pounds, and there was no evidence of a gunshot wound in it? A. That is correct.

Q. Just one more question Your Honor. Can you tell the Court and Jury how long after you returned to your office at Jefferson City, did you send those reports to the two people that you indicated you sent them to Doctor? A. No, sir, I can't tell you exactly, because it was placed in the—we have a one girl office, and she takes care of a number of insurance forms, and a few other things, and we try to practice law along with it, and we put the rough notes, and I couldn't tell you exactly, but I think probably within that week, and I am guessing that it would be the latter part of the week, before—

[182] Q. Mr. Riley was with you though when you were down there examining the body though, anyway? A. In Nashville?

Q. Yes. A. Yes, sir.

Q. I have no further questions. Thank you very much Doctor.

Redirect Examination by Mr. Riley

Q. Doctor, how long after a body is dead, would it start to show signs of stiffening? A. Show signs?

Q. Of stiffening?

MR. HENNELLY: I think that is rather vague, and indefinite.

THE COURT: Are you making an objection?

MR. HENNELLY: Yes, to the use of the word "stiffening".

THE COURT: Overruled.

A. As I stated before, I think it varies a good deal.

Q. Well, what I am getting at Doctor, how long a period of time, if you can say on the average, would a body, from the time that a body begins to stiffen, how long would it take until rigor mortis is completed? A. Well, to further—the actual beginning of the stiffening is the beginning of rigor mortis, that is rigor mortis.

Q. Does it get stiff all at one time? A. No, sir, I don't think so.

THE COURT: That is what he is asking you Doctor.

[183] A. No, it goes by degrees.

Q. Gradual? A. Yes, sir.

Q. That is all.

MR. HENNELLY: No more, thank you.

THE COURT: Now gentlemen of the Jury, we are going to recess for the supper hour. The Sheriff has made arrangements for your evening meal. I might further say to you that in a case of this kind, that it is necessary that the Jury be kept together from the beginning of the case and during the recesses of the Court, and for the supper hour and later for the night recess of the Court, it is neces-

sary that the Jury stay together and not become separated from each other. As you are walking down the street or going back and forth, either to the hotel or to the restaurant, don't straggle out or become separated from each other. Don't allow any person to speak to you about this case or don't you speak to anyone about it and you shouldn't discuss the case among yourselves, during the recesses of the Court. In other words, when you are around the table eating tonight, don't talk about the case. The discussion of the case by the Jury is supposed to take place only in the Jury Room, and then only after all the testimony has been heard, after the argument of counsel, and the instructions of the Court. You shouldn't allow anything to come into your hands that informs you concerning this case in any way. The reading of newspapers or listening to [184] radios, news reports or accounts or anything of that kind shouldn't happen. The Jury is not to be informed in any way of any matters concerning this case, other than from the testimony that you hear from the witness stand, and the testimony that is received in evidence, under the direction of the Court. The Jury is to be guided only and solely by the testimony and during the trial of the case, and not by anything that you may hear or obtain from the outside. If you have any needs that have to be met during the evening, or as you are going down to the restaurant, or anything of that kind, you can convey that information to the Sheriff. He will be with you during the recesses of this Court, and he has made arrangements for your meals and also arrangements for your housing. It would be impossible under our circumstances to house all of the Jury in one room. We don't have any one room large enough. We don't have facilities in the Court House for housing the Jury, but an area or section of the hotel has been obtained, and the Sheriff will be out in the hall so that no one can get to or from that

room without passing him, but you will be in separate rooms in the hotel and there will be more than one of you in a room. In other words, you will be in a section of the hotel to yourselves, and that is the only way we can do it under the arrangements and facilities that we have. Even our hotel facilities could not provide for a room sufficiently large enough [185] to house all of the Jury in one room, space area, but the main thing that I want to call to your attention is not to allow anyone to talk to you about this case, not to talk to anyone about it, not to discuss it among yourselves, not to read any accounts or listen to any accounts concerning this case at anytime, and not to allow anything to happen that would inform you in any way about the case from an outside source, other than from the testimony that you hear from the witness stand. Now Gentlemen of the Jury, this is very important, and I only want to do this one time, but I want to impress upon you the importance of it. You are members of this Jury panel and for this particular purpose you are officers of this Court in the trial of this case. In the trial of a lawsuit such as this, it is very important to all parties concerned, that you should stay together and not become separated. It is absolutely necessary that you conduct yourselves in such a way that none of your actions, or no statements or anything done by you or said by you can in any way reflect upon whatever verdict you shall reach in this case. So I want to impress upon you the seriousness of the requirements that you remain together, the requirement that you don't allow anyone to speak to you or talk to you about the case, the requirement that you don't discuss it among yourselves, and the fact that I believe I already said to you that you shouldn't become separated from each other, and [186] shouldn't try to receive or look at or read or listen to any outside reports of the case. Now, we will

recess, it is about 5:15. Will it be necessary for you to get the rooms lined out during the supper recess?

THE SHERIFF: It would probably be a good idea.

THE COURT: If any of you want to send any word to members of your family, why you may tell the Sheriff and inform him of that, and he and his deputies will call or see that members of your family are called, and if any of you want any toilet articles, like a razor or tooth brush or anything, well you can call members of your family and want them sent to you, they should bring those to the Sheriff's office so that no one can come up and hand you anything. They can hand it to the Sheriff and he can inspect it and see that you get it, if it is directed to you. I don't know of any reason why we can't be back here at 6:45. We will reconvene at 6:45. Inasmuch as the Jury has to be held together, we will work some this evening and take some additional testimony this evening before it is time to retire.

And thereafter to-wit: On the same day, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 426) Monday, July 18th, 1955, Regular July 1955 Term

At this time, at the evening recess, the Sheriff of [187] Butler County is sworn to take charge of the jury for all recesses of the Court and the jury is cautioned as to their conduct and behavior during recesses of Court and supper recess is declared.

And at this time, the supper recess being over, trial in this cause is resumed in the hearing of the evidence.

MR. RILEY: Call Clarence Dietzel.

CLARENCE DIETZEL,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. Clarence Dietzel.

Q. And where do you live Mr. Dietzel? A. California, Missouri.

Q. And how far is that from Jefferson City? A. Twenty-six miles.

Q. How old are you Mr. Dietzel? A. Fifty-five years.

Q. Are you a guard at the Missouri State Penitentiary? A. Yes, sir, I am.

Q. How long have you been a guard at the Penitentiary? A. A total of near onto eight years, close to eight years.

Q. Were you a guard at the Missouri State Penitentiary on the night of September 22nd, 1954? [188] A. I was.

Q. What part of the Penitentiary were you working in that night? A. I was assigned to duty to B basement.

Q. B basement, also includes Death Row? A. Yes.

Q. I will ask you if you are acquainted with the Defendant, James William Stidham? A. Yes, sir, I am.

Q. Do you know him by any other name? A. Well, his nickname is "Slick".

Q. How many inmates were in Death Row on the night of September 22nd, 1954? A. If I remember correctly, there was nine.

Q. And do the inmates have a nickname for you? A. Yes.

Q. What is that? A. They call me "Shaky". I have a tick that I have had since childhood.

Q. What did you say sir? A. They call me "Shaky". I have a tick that I have had since childhood. I have had

it ever since, a tick, that is what they call it, since I was a child, real small.

Q. You mean you shake your head sometimes? A. Yes, sir.

Q. And you don't have no control of it, is that right? [189] A. That is right.

Q. Now, did you notice any disturbance in the Penitentiary on the night of September 22nd, 1954? A. Yes, sir, I did.

Q. After you noticed a disturbance, did you have any conversation with Stidham? A. Yes.

Q. What was the first conversation that you had with Stidham? A. After they had broken into B basement door, and came into the B basement proper, I had the doors all locked securely, and that left them the bars and the gate between B basement and Death Row, of which was a partition between Death Row and B basement. They couldn't get into B basement for the inside doors. DeLapp—

Q. Now, just a minute. A. What was the question?

Q. I asked you if you had any conversation with Stidham, you yourself? A. I am sorry, I misunderstood you. Stidham?

Q. Yes. A. Yes, some of the boys wanted—

MR. HENNELLY: I am going to object, if Your Honor please, for the reason this is too vague and speculative and would be hearsay, insofar as it doesn't identify who wanted something.

THE COURT: It isn't responsive to the question.

Q. What did you do with respect to the windows in B basement? [190] A. I was closing the windows, to Death Row, and Stidham demanded in foul language "Goddamn it, leave those windows up." That was his window. And Laster, next to him, also demanded that his window be left up. The other windows were all closed.

Q. Mr. Dietzel, I will show you what has been marked State's Exhibit No. 5, do you recognize that sir? A. That is Death Row.

Q. Now, what windows are you talking about, are they shown on that exhibit? A. Those windows on the south side, facing these Death Row cells. They were back, you can't see them here, but they were back further.

Q. Now, where did those windows open onto? A. They were just the old type.

Q. No, I mean, when you look out of that window, what do you see? A. Over to F and G Hall.

Q. Is it out on the yard? A. Out on the yard between the two cell buildings.

Q. Now, do you know Don William DeLapp? A. That is right.

Q. Do you know him by any other name? A. His name was Curley.

Q. Now— A. Nicknamed "Curley".

[191] Q. Now, do you know Edward Paul Kenton? A. Yes.

Q. You know Jackie Lee Noble? A. Yes, sir.

Q. William R. Hoover? A. I do.

Q. Joseph M. Vidauri? A. Yes.

Q. You know Vidauri by any other name than that? A. "Jap Joe", his nickname.

Q. Did you see Williarm R. Hoover there? A. Yes.

Q. And when was the first time that you saw Hoover? A. That is when they were in B basement proper.

Q. When did you see DeLapp there? A. Yes.

Q. When was the first time you saw DeLapp? A. After they got B basement door, and entered into B basement proper.

Q. Did you see Kenton there? A. He was just a few steps in front of DeLapp.

Q. What about Noble? A. Noble was in the body of men, wasn't directly up next to the partition at that time. He was there. I had seen him in that body of men, but he wasn't up just directly close to the partition.

Q. Did you see Vidauri there? [192] A. Yes, I did.

Q. Where was he? A. He was back in the crowd about, oh, about from here to the man on the back end of the Jury there, just about that distance between me and him when I seen him.

Q. Did you hear any conversation between the Defendant Stidham and any of these other six that I have just named? A. Yes, a conversation between DeLapp, DeLapp said, called down from B basement door, and said, "Slick, oh, Slick".

Q. Now, who was doing this? A. That was DeLapp. He said, "Can you hear me?" and Stidham answered back and said "Yes", and he said "We are coming down to get you, we are going to get you out." Stidham answered back and said, "Hurry up, Goddamn it, I am waiting for you." And they continued on trying to get the gate open.

Q. How do you mean they tried to get the gate open? A. With a hammer, sledge hammer beating and malling, prying with something similar to a crowbar. I couldn't say how sharp it was. It was an iron bar.

Q. Who was doing this? A. DeLapp. That was out at B basement door. And several of the other boys, I don't remember their names, I can't tell, couldn't make a statement on that, the individual group, but DeLapp was one of them. So after a bit, DeLapp called back and said, "Slick, can you hear me?" and that was after a long [193] time of work, and Slick said, "Yes," and DeLapp said, "Goddamn it Slick, he said, we fucked up, we can't get to you." He said, "We just can't make it this time, sorry." Slick said, "Well it is all right," he said, "I know you have done your best, it is all right, I know you have done your

best." And they said, "We are going to try something else", Curley said, DeLapp. So DeLapp immediately started beating and hammering on the wall, partition between Death Row and the Classification Room, and then they worked there quite a while, and then they give that up, and came back and called again, and said, "We are going to try again", and by that, immediately, a short period of time, they produced a key from somewhere and opened the door, and then came into the B basement proper and that is when DeLapp demanded the keys of me.

MR. HENNELLY: Object to any conversation between the witness and DeLapp for the reason that that would be hearsay and not done in the presence of the Defendant.

THE COURT: Where were you at the time?

A. When DeLapp was talking to me, I was in Death Row. He was demanding the keys from me, just through the bars. I was in Death Row and he was in B basement proper.

THE COURT: How long was this after the noise, or I believe maybe the disturbance or something as you have described it, had first started, how long after, about, approximately, the beginning of it?

[194] A. I have no sense of time that evening.

THE COURT: I understand.

A. It was some period of time.

THE COURT: Had there been a continuous action in and around and about there all during that time? A. Yes, continuous.

THE COURT: Is this Don William DeLapp that you are talking about?

A. Yes.

THE COURT: May I see counsel here just a minute, and Mr. Ehlers. (Out of the hearing of the Jury)

MR. RILEY: This conversation I am asking about occurred after the conversation that he has related between DeLapp and Stidham, as to breaking in to get him out. He can then tell what was said and what was done.

THE COURT: This is the same William DeLapp that was charged as a co-conspirator or co-defendant or something with this defendant?

MR. RILEY: Yes, sir, charged with the same crime, in other words.

THE COURT: Well, of course it is obvious that this is all preceding the—

MR. RILEY: Killing.

THE COURT: Death of Donnell.

MR. RILEY: Oh, yes.

[195] THE COURT: I don't know that it is, but I presume that is what your testimony would be.

MR. RILEY: Yes.

THE COURT: All right, the objection will be overruled, and this witness may testify as to the events during the general disturbance that he has testified to, and the commencement of it and also conversation as you recall here between DeLapp and the Defendant, with reference to getting him out of this cell.

MR. HENNELLY: May I ask one question Your Honor?

THE COURT: Yes.

MR. HENNELLY: Does Your Honor feel that that is either part of the res gestae or does your Honor feel that it is a statement which is a furtherance of the conspiracy?

MR. RILEY: We offer it as the last, furtherance of the conspiracy.

THE COURT: You what?.

MR. RILEY: We offer it for the purpose of showing conspiracy.

MR. HENNELLY: If that be so Your Honor, I would say that while any statement of co-conspirator would be admissible against other co-conspirators, but I think that the corpus of such a charge is the proof of the conspiracy itself, and while I realize that that might be done even by circumstantial evidence, I don't think that in this instance, and at this point, that they have proved a conspiracy between these men.

[196] MR. RILEY: As far as DeLapp and Stidham are concerned, we have.

THE COURT: Perhaps. I don't know whether it would be exactly a conspiracy. At least there has been evidence up to this point to show that they have talked to each other with reference to obtaining Stidham's release from the cell.

MR. HENNELLY: That is right.

THE COURT: And as far as that is concerned, as to which category it falls in, I don't know that the Court would have to state in his ruling on the objection, which category it falls in. It is my offhand opinion at this time that regardless of the matter of conspiracy, it would be part of the res gestae as to what occurred, and as to what the events were there, and what took place. This man has testified that he has lost conception of time. I don't know whether he has testified about what time these matters first started to occur.

MR. HENNELLY: He did not.

MR. RILEY: I don't think he did.

THE COURT: He might know that, and then we have the previous testimony of Lieutenant Barton, he started at ten, so probably somewhere in this period I presume, well there is already some testimony in the record as to a riot having taken place in the prison, and that was, I guess a continuing process during which period many things could have occurred, which were of a contributing nature and so

ask the witness about what [197] time, if he knows, when this disturbance that he has designated first started, and then the objection will be overruled and he may answer the question.

MR. RILEY: Mr. Dietzel, going back to the beginning of this, what time in the evening of September 22nd, did you first notice a disturbance occurring?

MR. HENNELLY: Your Honor, I think that the use of the word "disturbance" is really a conclusion, and is a very indefinite and vague term.

THE COURT: The word probably is. I think the witness himself used it earlier, in earlier testimony. I believe the first statement you made Mr. Dietzel, with reference to any unusual occurrence there, was the gathering of some inmates at the prison, around the door, is that correct, do I understand you correctly on that? What did you first notice that took place there that was unusual in the ordinary, or I should say in the unordinary course of events, while on duty as a guard? A. The first disturbance, first unusual thing was a period of time before this occasion.

MR. RILEY: What time was it?

A. What time was it?

Q. Yes. A. It was about six-thirty.

Q. In the morning or evening? A. In the evening.

Q. Of— A. September 22nd.

[198] THE COURT: Now, what time, you testified here about some man coming to a door, and then having a conversation between DeLapp and the Defendant Stidham, can you tell us about what time that was, or about how long after this six-thirty period that you have just mentioned? A. I could give it to you about.

THE COURT: All right, just approximately.

A. Seven or seven-thirty, after my first observation.

THE COURT: Now then, did some time, considerable time elapse between the time you have testified that DeLapp left that door and before he was back again at the door, as you have just testified here, was there some time, period of time elapsed in there?

A. A short period.

THE COURT: Now then, you may proceed Mr. Riley, and the objection you previously made Mr. Hennelly, will be noted.

MR. HENNELLY: Overruled is it?

THE COURT: Yes, overruled. The question was with reference to DeLapp asking or demanding the keys to the door.

MR. RILEY: All right. Go right ahead.

A. DeLapp stepped up, as I mentioned a while ago, up next to the partition, between Death Row and B basement, and DeLapp demanded the keys, "give us the keys, goddamn you, give us the keys, and if you don't give us the keys I am going to kill you, and Goddamn it, I want the keys right now." [199] I insisted that I didn't have the keys and he again demanded them and immediately Kenton, about five, four and a half or five feet in front of him, next to the bars, one standing here and one about there, and I was about this angle between them, where they could both talk to me, and they said "Goddamn you, give me those keys."

MR. HENNELLY: Object to this conversation, this being Kenton, for the reason Your Honor, that it is hearsay and not done in the presence of this Defendant, and not binding upon him, and to introduce it under these circumstances, there being no prior showing of any connection between Kenton and this Defendant, would be in violation of the Constitutional rights of the Defendant.

THE COURT: Does the Prosecution expect to tie up the testimony in this matter with reference to the witness Kenton?

MR. RILEY (Out of the hearing of the Jury) The testimony will show that after they got into the Death Row with Kenton, I mean Stidham was with Kenton in the commission of the crime.

THE COURT: The objection will be overruled. Now Gentlemen of the Jury, let me say at this point, the Defendant James William Stidham is the person who is on trial in this case, and sometimes all the testimony in a case can't come in at the same time. The Court will instruct you on matters of law relative to this case at the conclusion of the case, and you will recall the testimony and be guided only by such testimony [200] as may be pertinent in the case, and under the direction of the Court. Now, I am going on the statement of the Prosecuting Attorney, I am going to overrule the objection and admit the testimony at this time, at this point.

MR. HENNELLY: Very well.

THE COURT: If it becomes necessary at some other point, that some instruction as to this particular phase is necessary, the Court will make it at that time to the Jury. The Court does not wish to say, by this statement to the Jury, that he is wanting to emphasize, or wants you to make any particular note of any testimony. You are the judges of the whole testimony and will remember all of the testimony in the case. All right, you may proceed.

MR. RILEY: Now just a moment Mr. Dietzel, you started to make a statement what Kenton said. Now, at this time that he made this statement, where was DeLapp?

A. Immediately back of him to the rear, about five and a half or six feet, four and a half or five or six feet. Just one statement followed the other. Kenton followed DeLapp.

Q. How much time elapsed from the time that DeLapp made this statement until, regarding the keys, until Kenton made his statement? A. A matter of seconds.

Q. All right now, what did he say? A. "Goddamn you, give us those keys, you old cocksucking [201] sonofabitch. If you don't give us those keys, we are going to get you. You old sonofabitch, there won't be nothing left to put you together."

Q. Did you give him the keys? A. I did not. He again looked up at me at an angle like this, and said, "You motherfucking sonofabitch".

Q. Who did? A. Kenton.

THE COURT: (Out of the hearing of the Jury) Now, what was it Mr. Hennelly?

MR. HENNELLY: I think we should do something about those young kids in the Court Room, seriously.

THE COURT: No, I am not going to do anything about anybody in the Court Room. It is a public trial. Anytime any of them want to leave the Court Room, they may leave, but I am not going to order anybody out of the Court Room.

MR. HENNELLY: I don't want the Court to think I was saying that in an attempt to get any advantage or anything. I want to state that into the record. There are some little kids out there, seven or eight years old, and I know it is none of our faults.

Q. Mr. Dietzel, I direct your attention,—strike that. I direct your attention to State's Exhibit No. 1, and will you look at that? A. Yes.

Q. Now, can you point out B basement door, Death Row door, [202] point out B basement? A. Can I take it down?

THE COURT: There is a stick there, if you can point it with that. You are standing in front of the Jury now.

A. B basement?

Q. Yes. A. This is B basement.

Q. Now, is that the door that you say they first worked on? A. That is the first door, yes, sir.

Q. Now, where were you standing when this conversation was going on? A. Sitting here part of the time, and standing along here watching, as much as I could.

Q. Now, when this latter conversation about demanding the keys was going on, where were you? A. There is a gate, Death Row gate right here. Kenton was standing just back of the gate and DeLapp was standing about another third of the way back. I was standing in about the distance, average distance between them, about half way between the two men, standing about right in here, just three to four feet back so they couldn't punch me with a stick or knife.

MR. HENNELLY: Object to that last section.

THE COURT: Sustained.

MR. HENNELLY: Ask that that be stricken, not responsive.

THE COURT: That may be stricken. Don't volunteer any information, just answer the questions that you are asked. [203] A. I am sorry.

Q. I show you what has been marked State's Exhibit No. 9 and ask you if you saw that or instrument like that, there that evening? A. I sure did.

Q. Where? A. At Death Row door, one similar like that was used to beat the lock off.

Q. I didn't hear you sir? A. One similar to this was what they used to beat the lock down off of Death Row door.

Q. Now, is that the second door? A. Second door. This door right here.

Q. Who was using it? A. The first man that used it was Curley DeLapp.

Q. After they got the door down, what happened? A. DeLapp was the first man in, and immediately followed by—immediately following him was Noble. Quite a few had filed in and Kenton followed up, and I can't remember exactly when Hoover came in, but he was in there after a bit. I recognized him and seen him.

Q. What happened to Vidauri? A. I didn't see him after I seen him in Death Row proper there, in this place here, I didn't see him anymore after that.

Q. You say you saw him inside of the first door? [204] A. He was inside the first door. I didn't see him after that.

Q. What happened to you? A. I was ordered to sit down on a little stand table similar to this, not quite as high, and they was giving me, what is termed in the prison, as a shake down, they gave me a shake down, and was looking for my keys.

Q. What keys were they looking for at that time? A. Death Row keys.

MR. HENNELLY: I am going to object. No. 1, for the reason that the persons have not been properly identified, and under those circumstances, it is too vague, indefinite and uncertain, and for the second reason, that what keys they were looking for will be a conclusion with respect to this witness.

THE COURT: Sustained, and that answer may be stricken and the Jury is instructed to disregard it. This witness may testify as to what happened, but not as to his conclusions as to what others were doing.

Q. You tell just what happened.

THE COURT: Well, let's direct a question to him so that there won't be any, so that the testimony will not be a conclusion.

Q. Tell what happened then? A. At the shake down they give me?

[205] Q. Now, who is they? A. Kenton was the one, he was the one that pulled my coat open and reached in and got hold of the lining and yanked the inside of the lining, pulled it down, completely out. And there was a cabinet between me and the Death Row cage door. Now, that is the cage door, that is this door there. That is this door right here.

Q. This door? A. This door.

Q. Are you pointing at the door marked No. 3 on there? A. No. 3.

Q. All right. Did you have the keys to that door? A. No, I did not.

Q. Who was, who searched you, besides Kenton? A. There was a colored boy, and about a half a dozen others. I couldn't identify them now.

Q. Was Noble there? A. In the immediate vicinity. He wasn't just at the shake down.

Q. Was DeLapp there? A. He was just a few steps back.

Q. What happened then? A. DeLapp told me to call the Deputy Warden's office.

MR. HENNELLY: Object to that if Your Honor please, I don't mean to interrupt so often, but there again I take it is hearsay, for the reason that it is not done in the presence [206] of this defendant, and under those circumstances, it would be a violation of his Constitutional Rights, to admit it against him.

THE COURT: Overruled.

A. Shall I proceed Judge?

THE COURT: Yes, I believe your last statement was, DeLapp told you to call the Warden's office.

A. Deputy Warden's office, and I was asked to make the call to Colonel Whitecotton, and—

MR. HENNELLY: Object to this conversation or even to this section as to who answered the phone, for the

reason that that is hearsay, that being a conversation between this witness and Colonel Whitecotton, that obvi -ously—

THE COURT: There has been no testimony as to their conversation, and don't testify as to the conversation. The objection will be sustained however.

Q. Leave the conversation out. A. Immediately DeLapp taken the phone over from me.

Q. Now, Mr. Dietzel, what he said to Whitecotton and what Whitecotton said back is not admissible. You just tell me what was done after that, what did they do with you? A. I seen the Death Row cage door swing open, and Noble and some other inmates and Noble taken me by the shoulder like this and by this arm and taken me in ahead just like leading me forward there this way, and another inmate kept me by this [207] arm, and shoulder back this way, and I never could see who had me by the left arm and never did.

Q. Why couldn't you see?

MR. HENNELLY: Object to that, that will call for a conclusion and be a self-serving statement.

THE COURT: No, I think this witness could testify why he couldn't see, without it being a conclusion. He would be the only one who would know I presume, why he couldn't see. Overruled, he may answer that.

A. Noble told me, "don't look up Shaky".

MR. HENNELLY: I really hate to do this so much, but I will have to object again for the reason that is hearsay.

MR. RILEY: If the Court please, this is one of the co-defendants, this is Noble.

THE COURT: Overruled.

MR. HENNELLY: May I, for the purpose of the record, so that I don't have to interrupt the witness so often, may the record show that I am objecting to any and all

conversations and may the record show that I am objecting to it for the reason that it is hearsay and not done in the presence of this defendant, and to introduce it would be a violation of the Constitutional rights of the Defendant with respect to all conversations between anyone other than this defendant, and either Mr. Dietzel, or between themselves?

THE COURT: Well, I understand your objection, and of course I [208] appreciate the situation of wanting to save time, however, I don't know, I hesitate sometimes to allow just a blanket objection, because there may be some conversations that may not be admissible, and I wouldn't want your objection to go to matters that the Court might sustain an objection to.

MR. HENNELLY: Very well.

THE COURT: But I think to this general testimony, all right, but if there is anything that is out of line with what we have permitted this far—

MR. HENNELLY: Very well.

THE COURT: That your objection may stand. Now, you were testifying about Noble and some others leading you and that you couldn't look back, and the last question that was asked you was why couldn't you see, who had hold of your left arm.

A. Noble said, "Shaky, don't look around too damn much, it isn't healthy for you, don't see anything, it won't be good for you."

Q. What happened then? A. I didn't try to look around.

Q. I know, but what happened then? A. I was taken to Death Row and locked in a cell.

Q. Now, you know just which cell you were put in? A. Not exactly, but it was one of these two cells here. I couldn't say because I wasn't allowed to look around, but it was [209] about one of those two cells.

Q. How long did you stay there? A. I would have to give about—

Q. Your best recollection. A. Twenty or twenty-five minutes.

Q. Then what happened to you? A. Noble came back to me and said, "Shaky, I am sorry we are going to have to move you again," so they unlocked the door and taken me out and we went up the steps to B Hall, went up and we couldn't get up the steps, so they lifted me up and pushed me and lifted me up over the side of the wall like this and I had to reach up and pull myself up over the top, and put me in the mop room cell in B Hall itself.

Q. Now, did you ever see the Defendant Stidham in B Hall? A. Yes, the next morning.

Q. Well, forget about that then.

MR. HENNELLY: I ask that that be stricken Your Honor.

Q. I don't want to pursue it, if it was the next morning.

THE COURT: Well of course the question, and the answer was responsive to the question that was asked, and I can't see that it makes any difference one way or the other. The objection is overruled, it need not be stricken and the objection comes a little late, and the objection should be to the question and not to the answer.

Q. Now Mr. Dietzel, directing your attention—

[210] MR. HENNELLY: What I was objecting to was counsel's statement and not to—

THE COURT: I didn't hear counsel's statement, other than he said that is too late.

MR. RILEY: Too late, and I didn't want to pursue it.

MR. HENNELLY: I thought he said just forget about that.

THE COURT: I understood counsel to mean, or to intend that he didn't intend to pursue it further after he found out it was the next morning.

MR. RILEY: That is correct.

THE COURT: Go right ahead Mr. Riley.

Q. Mr. Dietzel, I direct your attention back to the time you say they were beating on the door and particularly the conversation you related between DeLapp and Stidham that they were going to try something else. You know what they tried? A. They tried to break through the brick wall between the Identification Room and the Death Row.

Q. Now, will you show the Jury on that chart where that wall is? A. I think it is marked here different than my calling. We have certain names down there. This is proper very likely, but this is the room that they entered into and this door here and this room right in here, about where they started trying to beat in with the sledge hammer and hammer and whatever [211] they used.

Q. Did you see them go in there? A. No, sir.

Q. Were they hammering on it? A. Which?

Q. Did you hear them hammering on it? A. I sure did.

Q. Now, did you hear any conversation between DeLapp and Stidham, at which anything else was suggested? A. I can't recall of it at the present, only that they were going to try something else immediately, and they went back into this room and couldn't get in there, and following that, when they found out they couldn't break in here, they give it up, and come back and produced a key and opened this door.

Q. Now Mr. Dietzel, I will ask you if you overheard any conversation between DeLapp and Stidham regarding the south windows?

MR. HENNELLY: Object to—

A. Yes, sir.

MR. HENNELLY: Object for the reason it is leading and suggestive.

THE COURT: Overruled.

A. Yes, sir, Stidham told DeLapp, said come around to the south windows and said you might make it there easier.

[212] Q. Did you ever see Stidham in Death Row, I mean after, did you ever see Stidham released from his cell? A. What was it?

Q. Did you ever see Stidham out of his cell in Death Row that night? A. Yes.

Q. Well now, Mr. Dietzel, what I mean, did you ever see him in Death Row out of his cell? A. No, no, no, I did not.

Q. Did you ever see Laster in Death Row out of his cell? A. No, I did not.

Q. You don't know if they went out, you don't know when they went out? A. I don't know nothing about them at that time.

Q. Your testimony is that they were in their cells before this disturbance or whatever you want to call it, started? A. They were there, that is right.

Q. I believe that is all.

Cross-Examination by Mr. Hennelly

Q. Mr. Dietzel, at the time of this incidence which was in September of 1954, what was the nature of your employment with the Penitentiary? A. I was employed as a guard.

Q. Would you say that you were an extra man sir? [213] A. I worked for the utility, what we term there as the bench work, worked off the bench, capable to fill any vacancy that is in the institution, that is, some guard can't be there and be in position to fill his place, that is my job.

Q. And how long had you been employed in that capacity at that time? A. In that capacity?

Q. Yes. A. Since November, 1949.

Q. Since November of 1949? A. Yes, sir.

Q. Now, since September— A. The exact date, I can't give you.

Q. Now since September of 1954, have you had some different types of a job at the Penitentiary? A. I am still working off of the bench.

Q. Are you what they call a Senior guard now? A. I passed the examination as a senior guard, right.

Q. And when did you do that? A. I had my notification, notified in this month, a week or so ago. I can't tell you the exact date.

Q. And you have testified for the State in about four of these cases, since that time, haven't you? A. Sir?

MR. RILEY: Since when?

[214] Q. Since the riot? A. Four.

Q. Four times? A. Yes, sir.

Q. Will this new position, will this give you some increase in pay sir? A. It does.

Q. Now then, on the night in question, at what time would you begin your work sir? A. The question please?

Q. What time did you go on duty on the night of September 22nd, 1954? A. Three o'clock.

Q. At three o'clock? A. Yes, sir.

Q. And at that time, did you— A. —

THE COURT: In the afternoon?

A. P.M., yes. I have been on this shift for—since—

THE COURT: That is all right.

Q. Three P.M.? A. Yes, sir.

Q. Did you immediately go then to B basement? A. Right.

Q. Did you relieve someone? A. I did.

Q. And were you the only one that was in charge at that time, of B basement? [215] A. That is right.

Q. Now then, I will ask you, during the five or six years that you had been in the Penitentiary, working in the Penitentiary, is there always a man on duty in B basement? A. In B basement?

Q. Yes. A. Yes.

Q. So that is a round the clock situation, isn't it? A. That is right.

Q. All right. And when was the last time, prior to the night of September 22nd, that you had been assigned to B basement sir? When was the last time before that sir, that you had had that same job? A. That is hard, I don't keep no records of where I work, it might have been six weeks and maybe six months.

Q. Either six weeks or six months? A. Because I work from job to job each day.

Q. And so you hadn't had any contact with any of the men that were in Death Row, for a minimum at least of six weeks before the night of September 22nd, is that right? A. Of any of the men?

Q. Yes. A. No, I couldn't make no, I couldn't say positive.

Q. Couldn't say? A. No, I couldn't, because I was in there and there was too many men there to remember which man is which in the institution, and I worked all over it.

[216] Q. All right. Now, taking into consideration this night, and attempting to fix the time that these matters took place there sir, did you make a round of some sort, or did you have to check your men? A. That is right.

Q. All right. Now, what was the first time that you checked your men, if you recall? A. Immediately after I went on duty.

Q. That would have been sometime after three o'clock? A. Right after three.

Q. And were you, were the rules of the institution such sir, that you would check them again sometime after that? A. That is right.

Q. Now, had you made the second check? A. I had.

Q. Can you tell the Court and Jury at what time you made the second check? A. About six-thirty.

Q. About six-thirty? A. Yes, sir.

Q. Now, at that time, when you made your second check, were the men in their cells? A. They were.

Q. Do you know, did you see Mr. Stidham in there at that time? [217] A. Yes.

Q. Do you know what cell he was in? A. No, I can't recall back.

Q. Did you see Mr. Laster in a cell? A. He was.

Q. Did you at anytime, from three o'clock on, the day that you came in, did you let the men out of their cells at anytime? A. Out of Death Row?

Q. Yes. A. No, sir, absolutely not.

Q. Was it your, did the men ever get out of their cells in order to take a shower or anything like that? A. No, sir.

Q. And you have been working there for about six years, is that right? At least inside of the Penitentiary? A. A total of inside?

Q. Yes. A. Since August 16, 1948.

Q. Now— A. The last time I had employment there before.

Q. Now then, after you had made your first check, what was the next thing that you did sir, did you take some position near one of those doors, or just what were your duties then? A. Just routine. I checked also B basement, C basement, Death Row.

[218] Q. All right, so that you do leave this general area then to go to C basement then, do you? A. Why sure.

Q. Now, where is C basement? A. This side, it is this side of this building here.

Q. And after you left, when you go over into C basement, is there anybody over here that is guarding these doors or anything? A. Those doors are all locked.

Q. You have got a key, do you sir? A. Yes, sir.

Q. All right. Now then, I will ask you sir, after you had finished the second count, which you stated was about six-thirty, did you then proceed to make the same rounds, did you go over into C basement after your second round of the Death Row? A. Sir?

Q. After you checked the men for the second time in Death row, which was about six-thirty, did you leave there then and go over to C Hall then sir, to C basement rather? A. Not after that, no.

Q. Well, after you checked the men the second time, did you ever at anytime leave the floor, or this general area which is marked on State's Exhibit 1? A. I never left Death Row after six-thirty.

[219] Q. All right. Now at six-thirty— A. When I taken that count, I can't state exactly, but about this period of time, I never left Death Row.

Q. Very well sir. Now, at six-thirty on the night of September 22nd, 1954, was it dark outside yet? A. No.

Q. You know what the weather conditions were that night sir? A. No, I don't.

Q. You don't know? A. No, I don't recall. As I remember, it was fair.

Q. Very well. Now then, I will ask you Mr. Dietzel, after you finished that round at six-thirty, did you then go and sit someplace there or sit at a desk or take some position there? A. You want to know what I did after six-thirty?

Q. I want to know where you went. A. After six-thirty, I lowered the windows and that is when Stidham demanded me to leave his window up.

Q. I see. And then you— A. Laster demanded to have his left up.

Q. And did you then come back and take, and sit down here someplace sir? A. In line with this.

Q. You say in line with this, are there some chairs or a desk [220] there or— A. Chair and desk there so you can have observation all down there.

Q. And that would be a chair and a desk then that would be right in front of a gate, gate No. 3? A. Nobody over here at this wall.

Q. Would your back be toward the— A. No, my back was, I was sitting on the south wall where I can observe this length and this line.

Q. All right. A. Now then, I could see all down this way.

Q. After, can you give the Court and Jury any idea of what time it was, after you went back to close those windows and you came back and sat down to begin your regular routine, would you say that that was as late as a quarter to seven then sir? A. I couldn't state.

Q. Well, at least it was after six-thirty, wasn't it? A. Yes, sir, it was.

Q. Now, had you seen any other inmates in and around there other than those that were in Death Row? A. In the institution?

Q. In this building sir, in B basement?

THE COURT: After six-thirty?

Q. After six-thirty? A. The porter is in B basement and he [221] was over in B basement.

Q. Who was? A. The porter.

Q. What is the Porter's name? A. Blue, I don't know his name, he goes by the name of Blue.

Q. And did he, did you see at anytime around six-thirty, did you see Mr. Trout? A. He wasn't in B basement.

Q. All right. A. He was in, not after six-thirty, he was over here.

Q. Mr. Trout's room is where? A. In the plumber's room.

Q. Plumber's room? A. Yes, sir.

Q. Now, how long had you been there, sitting there at your position sir, before you heard something unusual or saw something unusual, after you had gone back to those windows? A. The disturbance as I call it, was before, was at that time about six-thirty.

Q. Well, had you gotten back and sat down already? A. After six-thirty?

Q. Yes. A. This is the place where we sit, where we rest.

Q. Yes. A. But after six-thirty, I don't recall [222] ever sitting down.

Q. So that if I understand correctly then, when you finished that second round and when you checked those windows, you didn't sit down then? A. No, sir, not any period of time, I may have sat down, and I was up on the move, and it wasn't sitting time Mister.

Q. Was there something unusual going on already at that time Mr. Dietzel? A. Certainly was.

Q. And were there some people down inside of the B basement by that time sir? A. No.

Q. Now, how long was it before anybody other than the regular people who were confined in B basement came down into B basement? A. Sir, I can't give you the exact time, it was a period of time before they came in there. It was dark.

Q. Was it dark yet at six-thirty? A. No, it was getting, probably getting, sun lowered probably, but no, it wasn't dark down there.

Q. But by the time they got down there, it had already turned dark out, is that right? A. As I recall, it was dark.

Q. Now, can you give this Court and Jury any idea as to what time that was, was that seven-fifteen? [223] A. Yes.

Q. Sir? A. You say seven-fifteen?

Q. Yes, which would have been about forty-five minutes after your check was made, your second check sir? A. Could have been, or maybe a little more, I couldn't tell you exactly sir. I couldn't give you the exact time.

Q. So that it was at least seven-fifteen, is that your testimony sir? A. It was after six-thirty. I couldn't tell you, I sure couldn't.

Q. All right. Now then, where did you, did you see some men come in down there?

MR. RILEY: If the Court please, I think counsel ought to—come in down there doesn't indicate anything.

Q. I will rephrase the question Your Honor. Did you see some men who were not normally inmates of B basement come in any of these doors up here? A. No, didn't see them come in up here.

Q. Where did you see any of them come in? A. They were all down in front, down here when I saw them.

Q. All down there already? A. I had to come down these steps of course, but I didn't see them come down.

Q. They had— A. They had to come down these steps, [224] but I didn't see them come down.

Q. You couldn't see them from where you were? A. At this time here, no, but in the meantime, I was—after they started hammering, I moved down here.

Q. But when you were down in here, you couldn't see out in here, is that right? A. Yes.

Q. Now then, can you give the Court and Jury in numbers any idea of how many men came down there? A. Back here?

Q. Yes. A. I have no idea.

Q. Well, would you say there was as many as two hundred or three hundred? A. No, I have no idea of how many was in here. I couldn't make an estimate, be-

cause I couldn't see only a few men, the bodies of a few men along these bars here. Here I couldn't see.

Q. Mr. Dietzel, do you remember testifying in the Rollie Laster trial, the first one of these cases tried in Jefferson City, do you recall that sir? A. Yes, sir, I can tell you what you want me to say.

Q. Well, have you read this over sir? A. No.

Q. I am going to ask you sir, page 47, I am going to ask you if this question was asked you and this answer given. May the [225] record reflect that I am reading from a transcript of the Laster trial, and which is the first trial, and counsel has a copy of it.

THE COURT: Page 47.

Q. Page 47. "Q. How many men boiled into that hall, into B basement side? A. It was a continuous pile of men and boys for the whole time I was there, but I could see, observe anywhere between one hundred and fifty to five hundred men, and I am sincere in that estimate; they were coming and going and pushing through."

MR. RILEY: If the Court please, I object to that, they are not talking about the same place.

THE COURT: Let me see this.

MR. RILEY: You asked him about coming into B basement side.

MR. HENNELLY: Let me check it. I don't want to mislead him. Let me check it.

THE COURT: Is B basement side different than Death Row?

A. He was pointing out here—

THE COURT: No, I am asking you a question, is B basement side, is that different than Death Row?

A. They are on the east end of the B and C basements, and Death Row and the B hall is the colored segregation for newcomers along on B basement side. They are both on the same side.

MR. HENNELLY: For the purposes of this record, I will withdraw [226] that question until I can make sure that this is the same place Your Honor.

THE COURT: All right.

Q. Can you give the Court, can you point out to the Court and Jury where B basement side is there? A. This is B basement over here, all of B basement. Death Row is included in B basement. This is B basement. This is the lobby out here between B Hall and C Hall basement.

Well then, let me ask you this sir, at the first time that you saw any man there, can you give us any idea of the number that you saw, either in the lobby or in the B basement side? A. I testified one hundred and fifty to five hundred men, and that estimate might be plenty low because that was after they broke B basement open and B basement door and came into B basement proper sir, and then there is where I seen the men, that is where my testimony was.

Q. Now, let me ask you this sir, the first time that you saw any men then, they were in the lobby here? A. Yes, sir.

Q. And you can't give us any idea of the number that you saw then? A. No.

Q. Now then, what did those men do sir, that came in at that time?

[227] MR. RILEY: Came into where?

Q. Came into the lobby? A. DeLapp, Curley, made contact by voice to Slick Stidham down here in a loud voice, and stating as I said a while ago, in the testimony. That was the first observation that I knew that it was men working in there, and the bodies of the men, I couldn't see, just a few men up in front.

Q. All right. Now then, was there a lot of noise down there? A. There was.

Q. Was everybody hollering down there sir? A. More or less at the time, they were loud, and at times not so loud. That is hard to state exactly. It would be hard to make an exact statement.

Q. But your testimony is you heard a conversation between DeLapp and Stidham? A. That was later, that was between the two. I was in between the two men and I could hear them.

Q. Now, can you give the Court and Jury any idea as to what cell Stidham was in now? A. I don't recall. He was back there somewhere. I don't recall the exact cell.

Q. Now then, did those men begin working on one of those doors? A. Started in on B basement door.

Q. Now, can you give the Court and Jury any idea, any idea of [228] how much time they spent working on B basement door? A. Not exactly. They were there a good long period of time.

Q. Now, when you say a good long period of time, do you mean forty-five minutes or an hour or a half hour, or how much time do you mean sir? A. I would hate to make a statement. I am afraid I couldn't make an exact statement, because I never thought of looking at my watch and had no reason to, and I just can't recall the time. I just can't.

Q. Can you give us any idea sir, of how much time they were there at the B basement door? A. The first time they were there, they could have been there twenty or twenty-five or thirty or fifty minutes. I couldn't say exactly as to the time.

Q. Now, did they break open the door at that time? A. No, they didn't.

Q. Now, can you give us any idea of what time it was when they left that door, would you say it was as late as eight o'clock when they left that door? A. No, I can't,

I couldn't make a statement. I just don't have no idea of the time.

Q. All right. Now, where did they go from that door sir? Point and show the Jury. A. To this room, it is marked Christian Science and we guards called it the classification room.

[229] Q. It is marked here Christian Science? A. Yes, sir.

Q. That is really the classification room? A. That is what we called it, us guards, now I don't know what the official name is, they give them different names, and we have nicknames for different places, but this is the place that they beat the wall in to break into Death Row proper. They left this door here and went to this room here.

Q. Now Captain Shaky, Captain Dietzel, at the time that they were pounding on this door, where were you? A. On this front.

Q. And at that time, did you have some keys with you sir? A. No.

Q. Where had you gone with the keys? A. I disposed of them.

Q. You disposed of them? A. Yes, sir.

Q. All right. And where did you dispose of them?

MR. RILEY: If the Court please, I don't think it is material what he did with the keys.

THE COURT: Come up here gentlemen. (Out of the hearing of the Jury) What is it now Mr. Riley?

MR. RILEY: He doesn't want to tell what he did with those keys that night. He hid the keys, but he doesn't want to tell, and he asked me not to make him tell what he did with [230] those keys that night. I don't know why he feels that way unless it is because he is still inside of the Penitentiary.

THE COURT: Let me ask this, were the keys ever found, ever used in any of this matter that went on there in the prison?

MR. RILEY: Somebody got them later on. He didn't know where or how they got them, because they didn't get them from him.

THE COURT: Well, were they used in opening any of these doors or is there any testimony to that effect?

MR. RILEY: He testified that they got them from someplace. That was his first testimony.

THE COURT: Well, were these his keys that they got?

MR. RILEY: I don't know. He doesn't know either.

THE COURT: Let him go ahead and answer. I don't see that it can make any difference. He said he hid them. Is there any particular point in wanting to know Mr. Hennelly?

MR. HENNELLY: Only that the evidence is that somebody opened that door later on, and I want to know where they got that key to open that door.

MR. RILEY: Which door are you talking about?

MR. HENNELLY: The Death Row door that had been opened.

MR. RILEY: I don't think you are talking about the same door key.

MR. HENNELLY: Whatever keys he got.

THE COURT: All right, lets go ahead.

MR. DIETZEL: (Out of the hearing of the Jury) Your Honor, [231] that is a very personal question with me, me and the key. The inmates never did use my key. That is sworn testimony. They never did use my keys.

THE COURT: The question is here, what was it that you did with the keys? You said you hid them.

A. I disposed of them.

Q. Disposed of them, and the next question was where did you dispose of them.

MR. HENNELLY: The question is Mr. Dietzel, where did you dispose of the keys?

MR. RILEY: If the Court please, I would like for counsel to make it more specific, what keys he speaks of.

Q. The keys you disposed of.

MR. RILEY: Keys to which door?

THE COURT: Lets find out what keys he had.

Q. What keys were in your possession that night Mr. Dietzel, the keys to which one of these doors? A. The key to this door and Death Row and Death Cage, and safety keys to these.

Q. So that you had the keys to doors 1, 2, 3 and some safety keys, is that right? A. Yes, sir.

Q. Now, when you indicated you disposed of the keys, did you dispose of all of those keys? A. Yes.

[232] Q. Where did you dispose of them? A. That is personal.

THE COURT:

Q. Nothing personal in the trial of this case, you will answer the question. A. I hid them in the clock.

Q. Hid them in the clock? A. Right.

Q. Now then, after the men left this door, door No. 1, and I believe you indicated that they went to a position which is now marked on this exhibit as the Christian Science Chapel. A. I didn't get the first question.

Q. After they left the position, Position No. 1, did they then go to a position over here near the Christian Science Chapel? A. Right.

Q. Where were you stationed during that time Mr. Dietzel? A. In this position along here.

Q. Now, how much time did they use up in knocking on this wall here which is now the position, the second position that they took up at the Christian Science Chapel office, or as you call it, the classification room? A. I can't say. Time just flew so fast, that I just don't know, I honestly can't tell you.

Q. Very well. Let me ask you this, did they take as much time as they took working over on that first door? [233] A. I don't think.

Q. Would you say they took as long as half an hour sir? A. I don't know.

Q. You don't know? A. No, time was just a matter of lapse, I couldn't give you the time, didn't mean a thing.

Q. Now, could you see them working on this side here at the classification room? A. No, sir.

Q. Where did they go from there? A. Came back to this door.

Q. To Door No. 1, the first position that they were in? A. Yes, sir.

Q. How much time did they spend there? A. A short time, just when they found the keys and came in.

Q. All right now, who was the first man you saw with a key? A. I don't know the boy.

Q. Had you ever seen him before? A. Not as I remember.

Q. Was he a white man or a colored man? A. I don't remember now.

Q. I am going to ask you— A. Not now, I don't remember.

Q. You don't remember now whether it was a white man or a colored man? A. At the time I did, but I have forgotten now.

[234] Q. Now, I will ask you Captain Dietzel, Mr. Dietzel, at the time that they finally got the key and got in, were the lights on down there sir? Were there lights burning downstairs? A. Just one in Death Row.

Q. In Death Row? A. Yes, sir.

Q. Were there lights burning out in the lobby? A. I don't think they were, because, no, I don't think they were burning in the lobby.

Q. Very well. A. That is back out here?

Q. Yes. A. I don't think they were. I couldn't see the men in the back here, and if they were, I could have seen them directly through. There may have been in this part, but where I was looking, I couldn't see.

Q. You didn't put out any lights that night yourself, did you? A. No, I didn't.

Q. Now, I will ask you sir, was there any water on the floor around there at the time that those men broke through? A. No.

Q. The water hadn't come through then yet, is that right? A. No.

Q. Now then, as they came through, about how many men came through that door sir? A. Which door?

[235] Q. Well, which was the first door they broke in? A. B basement door.

Q. That is No. 1 door? A. Yes.

Q. Now, how many of them came in there sir? A. I testified one hundred and fifty, possibly five hundred men, as I said a while ago. Maybe, as I said a while ago, maybe more or less. That may be a low estimate.

Q. You say that might even be a low estimate? A. Yes, sir.

Q. Now, those men sir, were they armed? A. Yes.

Q. Did you see some of them with knives and brickbats and sticks and things like that? A. Yes, everything imaginable, every imaginable weapon you could think of, outside of a firearm.

Q. Maybe as many as five hundred of them then, is that right? A. I wouldn't make a statement on that.

Q. All right. Now, after they came through that first door, where did they go Mr. Dietzel? A. They milled around in here, and started to break this door down.

Q. Well, they got through here, didn't they? A. This door here and in here. Now, Death Row— here

is where they dwelled in here a while, and DeLapp taken a sledge [236] hammer, this caliber and this size, and started beating on this door into Death Row.

Q. Now, which one is that? A. That is right here.

Q. In this Death Row Cage? A. Not the cage, Death Row proper. That is the door between B basement and the negro side, and Death Row over here. This row right here, No.2.

Q. This is the door that you are talking about, not this one? A. No, there is no door there.

Q. This one here? A. No. 2.

Q. Now, can you tell us, give us any idea of what time it was that DeLapp was pounding on door No. 2, was it nine o'clock at night, or eight o'clock? A. At present, I can't recall. I can't recall it was after they broke in here, immediately after they broke in.

Q. Can you give us any idea of how long it took them to get through No. 2 door? A. Oh, possibly, they quit this door here, Death Row door, and went back out into the Christian Science Chapel, this original place, and beat some more there the second time, and they thought they could see a crack there, and they went back just a short time, maybe five or ten minutes, and they came back down and used a crowbar, pried out in between the lock and got in like this, and hit it and drove it in and got it [237] loose, and then they started beating with a hammer again, and beating the lock again. DeLapp reached through the bars and picked up the tumblers and put it out, or pulled it out, and then the door swung open, and turned them into me.

Q. Now, when they did that sir, would that be the door that would open up the cage door? A. No, no.

Q. Very well. When you said that he did that, referring to the tumblers, what door did he open up? A.

Death Row door between B basement and the negro side and the Death Row.

Q. In order to get back in here, they would have to open up a third door? A. That is this door here.

Q. Now, how long did it take them to break open that door? A. As I recall it may have been a dozen licks hit on that door.

Q. Would you say then sir, that the Death Row door took considerably less time to open than the rest? A. A very short time. They found some keys someplace that worked.

Q. Found some keys? A. Yes, sir. They had keys, and I don't know where they got them.

Q. You know who had those keys? A. No, I don't.

[238] Q. Was he a white man or a colored man? A. It could have been either, I can't recall at the present. I just can't recall at the present.

Q. All right. Now then, who was the first one to come in and contact you sir, which one of those men was the first man to come up to where you were after they broke through the third door? A. Second door?

Q. They contacted you at the second door? A. Yes, sir.

Q. Who was the first man to do that? A. DeLapp.

Q. All right. Now then, I believe your testimony is sir, that they took you and put you in one of the cells? A. Yes, sir.

Q. And do you know which one it was, which cell it was? A. Not exactly, somewhere along here.

Q. By that time all of the doors in Death Row then had been opened, had they sir? A. Well, they put me up there, they were, yes, at that time they were all open.

Q. Now, were the lights out back there in Death Row by that time? A. No.

Q. And can you give us any idea, were there any lights in there, [239] on the wall or ceiling, or anything like that? A. In the, above the ceiling.

Q. How many lights are in there sir? A. I can't give you any exact number. I can't tell you how many. I never had no reason to count them.

Q. All right. Let me ask you this sir, at anytime while you were in there, and before they moved you upstairs, did the lights go out downstairs? A. No, not while I was there.

Q. So that while you were downstairs, the lights were on all the time, is that right? A. Yes.

Q. Is that correct? A. That is right.

Q. No further questions Your Honor.

Redirect Examination by Mr. Riley

Q. Mr. Dietzel, I show you what has been marked as Plaintiff's Exhibit No.7, and can you tell the Jury what that is? A. That is the Death Row cage.

Q. Are any lights shown inside there? A. Up over the ceiling.

Q. You will have to show the Jury. A. Up on the ceiling, there are lights up here, sufficient lights to light the cells, and the hall. There were other lights in the building, but these are the main lights.

[240] Q. Now Mr. Dietzel, you say you are a senior guard there now? A. Yes, sir.

Q. Now, is that under the recent merit system that has been put in force? A. Yes, sir.

Q. And the money you make now, other guards gets the same, got the same raise, didn't they? A. All the other guards that passed the examination, draw the same as I do.

Q. Now, Mr. Dietzel, you were the only guard down in B basement that night, weren't you? A. That is right.

Q. On duty? A. Yes, sir.

Q. And what time did you finally get out of the B Hall altogether? A. When I got out of B Hall?

Q. Yes, B and C Hall, or B Hall, not C basement? A. The next morning.

Q. All right. A. It was daylight, I don't know what time it was.

Q. You were scared weren't you Mr. Dietzel?

MR. HENNELLY: Object to the form of that question.

THE COURT: Well, it is leading, and the objection will be sustained.

[242] Q. I believe that is all.

MR. HENNELLY: No further questions.

MR. RILEY: Call James Creighton.

MR. HENNELLY: May the record show that after the State had called the witness, James Creighton, that counsel for the Defendant represents to the Court that he is in receipt of information to the effect that this witness is of unsound mind, and is consequently incompetent to testify before this Court, and the Defendant asks the Court for a hearing to present that evidence to this Court for the purpose of the Court determining as a matter of law, whether or not the Defendant, whether or not this witness is even competent to take an oath or to even testify in this Court.

THE COURT: All right, you can show the Jury is excluded Mr. Ehlers, and let's proceed with what testimony you have to offer relative to this witness.

MR. HENNELLY: Very well Your Honor.

The Jury was then excused, and the following proceedings were had outside of the hearing of the Jury.

MRS. ALMA MILLER,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Hennelly

Q. What is your name please? A. Alma Miller.

Q. Now speak up Mrs. Miller, so that this gentleman writing [242] this down can hear everything you say. A. I will do my best.

Q. That is Mrs. Miller is it? A. Yes, sir.

Q. Where do you live Mrs. Miller? A. Fulton, Missouri.

Q. Fulton, Missouri? A. Yes, sir.

Q. What is your occupation? A. I am medical records clerk at the State Hospital.

Q. You are the medical records clerk at the State Hospital? A. That is right.

Q. Just what is the name of the hospital of which you are the Clerk? A. State Hospital No. 1.

Q. And you say you are the records librarian there? A. Well, no, that isn't my classification, but that is what I do.

Q. I am sorry. Are you the Official Custodian of all the records of the patients at that hospital? A. Yes, sir.

Q. And are those records kept under your custody and control? A. Yes, sir.

Q. Pursuant to a subpoena duces tecum, which was issued out of this Court, have you brought with you the records of the [243] treatment of one James Creighton? A. Yes, sir.

Q. And do you have that record with you? A. Yes, sir.

Q. And is that a record which is kept in the normal course of the business up there? A. Yes, sir.

Q. And it is one of the official business records of the hospital? A. Yes, sir.

Q. And you are custodian of that record, is that right? A. Yes, sir.

Q. May I have it please? Will you mark this Exhibit B.

Reporter marked Exhibit B, hospital record.

Q. Now, I want to offer this in evidence, if Your Honor please.

MR. RILEY: You mean the whole record?

MR. HENNELLY: Yes, there may be parts of it that are inadmissible, but this is the entire record.

THE COURT: Have you checked it over, and do you know what parts you are referring to here?

MR. HENNELLY: Yes, You Honor.

THE COURT: This is quite a lengthy record.

MR. HENNELLY: Do you want me to separate it?

MR. RILEY: Let me ask this witness some questions first.

[244] MR. HENNELLY: All right.

Cross-Examination by Mr. Riley

Q. Mrs. Miller, the material contained in this file, now you didn't make this up, did you? A. Not all of it.

Q. Well, you don't know who did, do you? A. No, I don't know.

Q. Will you speak a little louder? A. No, I don't know.

Q. You don't know who made this material up, do you? A. Not all of it.

Q. Yes. And what did you make up? A. I made up the progress notes and the admission sheet and that is all I made up.

Q. Made up the progress notes and the admission sheet? A. Yes.

Q. And you don't know who made up the rest of it, do you? A. Well, some in there, I know who made it up.

Q. Well— A. The longhand is Dr. Price's.

Q. And all the rest of it you don't know who made this up, do you? A. No, sir.

Q. You weren't present when it was made up? [245] A. No, sir.

Q. Now, even on Dr. Price's, you don't know, you didn't see him make that up? A. But I know his handwriting.

Q. Yes, but you didn't see him make it up? A. No, sir.

Q. And outside of that, the rest of the record, you don't know who made that up at all? A. No, I don't know.

Q. You will have to speak up so the Court and the Court Reporter can hear you. A. No, I don't know who made it.

Q. And you weren't there when it was made up? A. No, I wasn't.

Q. Now, the only thing is, you take a lot of material, and data that someone brings to your desk, and you put it in this file, isn't that the way this is made up? A. No, all the data comes to a box that I have, my own box, and then I take it down and put it in my official records.

Q. You don't know who put it in this box, you were not there when they put it in, were you? A. No.

Q. And you are not willing to swear that these records are correct, or that you know who made them up? A. I don't know if they are correct or not, no.

[246] Q. That is all.

Redirect Examination by Mr. Hennelly

Q. Let me ask you this, how are these records stored out at the hospital? A. They are in a file down in the record department.

Q. Are they locked up at night? A. Yes, sir, they are.

Q. Do you have a key to them? A. Yes, sir.

Q. Now, Your Honor, to begin with, I don't think that a record which is kept in the normal course and scope of the business, that the record has to be made by the person who brings them into Court.

MR. RILEY: The statute says that the Court must be satisfied as to the mode of preparation.

MR. HENNELLY: I think Your Honor, that No. 1, they may be testified to by the doctor himself, No. 2, that they may be testified to either by the person who actually made them up, or by the official custodian of those records.

THE COURT: You have handed me here a file that consists of some number of pages. I can't see how many without taking it apart. I want to know what in that file is pertinent to the matter of adjudication of insanity. I think a person would have to be adjudicated insane before they would be disqualified [247] as a witness.

MR. HENNELLY: I don't think that would be necessary.

THE COURT: Well, you mean the Court would take notice of the insanity of someone who hasn't been adjudicated insane?

MR. HENNELLY: I think this Your Honor, that with the records of, an instrument of the State, which states that he is a homicidal maniac, or words to that effect, that that official record of the State Hospital, made by competent doctors, and we won't take into consideration that this man is an inmate of an institution, and will probably never be declared incompetent, because that is not in the normal course of events done with a person who is in a Penitentiary, then I say that under those circumstances Your Honor, that if the records are proper and if

they are properly admissible, and if they reflect his incompetency, it isn't necessary that he be officially adjudged incompetent by a Probate Court or Court of Competent Jurisdiction, to show a judgment—

MR. RILEY: Just a minute Mr. Hennelly, you don't represent to the Court that there is any time period shown in that file which would cover from September 22nd, 1954, down to this date, do you?

MR. HENNELLY: I represent to the Court, that at the time he left the hospital, that he was, that they said he was a homicidal maniac and that he was then taken to and placed in Death Row and that there was no subsequent statement of any [248] kind by any competent—

MR. RILEY: Will you show me where that file shows that, will you sir?

MR. HENNELLY: Very well.

MR. RILEY: Who made that up, will you show me who signed that?

MR. HENNELLY: This is a part of the official record dated April 14, 1954, signed G.D.H.

THE COURT: Mrs. Miller, do you know who G.D.H. is?

A. No, I don't.

MR. RILEY: Mrs. Miller, you don't have anyone in your hospital with those initials?

A. I don't know.

MR. HENNELLY: This is the one that I have in mind Your Honor.

THE COURT: Let me see that. You have marked the whole file as Exhibit B.

MR. HENNELLY: I just had it marked for identification, as Exhibit B.

THE COURT: Is that the only part of it which you wish to introduce, and if so, I think it should be designated by some exact exhibit number, make it C or whatever you want to.

MR. HENNELLY: There is a number W42266.

THE COURT: Does the number W42266, does that number mean anything to you?

A. No, sir.

[249] THE COURT: I want these pages that you have just referred to, there is three pages, no, two pages is all you showed me, and that is all I read. I am not going to read through this whole file of impertinent matters. I will ask the Reporter to mark these two sheets of paper as Exhibit C and Exhibit C-1, and then mark this sheet as Exhibit D.

Reporter marked I don't Exhibit C, C-1, and D, sheets of paper in the file of James Creighton's hospital record.

THE COURT: All right, are you now offering C, C-1 and D?

MR. HENNELLY: Yes, Your Honor.

MR. RILEY: Before Your Honor accepts them, or refuses them, I want to ask this witness here some more questions.

THE COURT: All right.

Recross-Examination by Mr. Riley

Q. Mrs. Miller, I will show you what has been marked Exhibit D, and can you tell the Court who prepared that? A. No, I can't.

Q. And can you tell by whom it was prepared? A. No, sir.

Q. You can't say by whom it was prepared? A. Nothing only except up here where it is typed, says Dr. Price. It is just typed, it doesn't have his name signed to it.

THE COURT: Well the question was, do you know who prepared it.

[250] Q. Who prepared this information on this form? A. You mean who typed this up?

Q. Yes. A. Yes, I know.

THE COURT: Who? A. Yes, I know who did it.

Q. Did you see them do it? A. Yes, sir.

Q. How do you know? A. Because it has got his name signed up here.

Q. Well, because there is two typewritten letters, is that the only information you have? A. That is the only information I have.

Q. You didn't see it prepared? A. No, sir.

Q. You don't know what day it was prepared? A. That is the date up there.

Q. Other than the date, you don't know what day it was prepared? A. No.

Q. And it has no identifying signatures, whatsoever on it? A. No.

Q. I mean signatures and writing? A. No.

Q. If the Court please, at this time—

MR. HENNELLY: Might I ask her a couple of questions?

THE COURT: Yes.

[251] *Redirect Examination by Mr. Hennelly*

Q. This, which we have marked State's Exhibit, Defendant's Exhibit D, this is part of the folder of the official records of James Creighton, is that right? A. Yes, sir.

Q. And this is part of the same folder is it, that is kept in the normal scope and course of business? A. Yes, sir.

Q. Now— A. It is the original copy.

Q. Original copy? A. Yes, sir.

Q. Now, the physician in charge, Dr. Price, do you know him? A. Yes, sir.

Q. Is he a member of the staff? A. Yes, sir, as far as I know he still is a member of the staff.

Q. And who is S.A.? A. It is a patient, Stewart Allen.

Q. Who? A. Stewart Allen.

Q. You say that is a patient down there? A. That is right.

Recross-Examination by Mr. Riley

Q. You mean a patient in the insane asylum typed this up? A. Yes, sir.

Q. Well—

MR. HENNELLY: But this is kept in the normal course of business [252] is it?

A. Yes, sir.

THE COURT: I don't know whether that would be normal or not.

A. Far as I am concerned, it is normal.

MR. RILEY: You don't know when it was prepared or you just find it in the record?

A. I put it in there.

Q. You found it in a box? A. That is right.

Q. And you are not willing to swear that it is correct by any means? A. No.

Q. Because you don't know? A. I don't know, it isn't signed.

MR. HENNELLY: That is our offer Your Honor, I am offering it. Let me say this in all sincerity. A librarian certainly couldn't see the records made or couldn't make them all herself, because under those circumstances where you have thousands and thousands of records in a big hospital, and the person leaves, the validity of those records would be lost unless the Court permitted the record to be introduced by the person who is the official custodian of the records, and unless those records are kept in the normal course of business. Maybe Your Honor can recall, there is a recent case, no more than two or three years old, which really has all the law on [253] this thing.

MR. RILEY: That is the Melton case.

MR. HENNELLY: Uniform business case.

THE COURT: Let me ask you this, are you making an objection to their introduction?

MR. RILEY: Yes, sir.

THE COURT: Do you want to state your objection into the record?

MR. RILEY: I object to it for the reason that this record, this exhibit as it is presented, does not present a record of an act, a condition or an event that is really named to any issue in this case, and for the further reason that the witness here has not testified to its identity, has not identified it as being the—the mode of its preparation, nor does she know by whom it was prepared, nor does she know that it was prepared at or near the time of the act, condition or event, which it purports to show, and for the further reason that the exhibit constitutes opinion and conclusion and is hearsay.

THE COURT: Do you have other evidence relative to matters, the charge of insanity as against the witness that has been called?

MR. HENNELLY: This is the only evidence that I am going to offer in support of the motion, in support of a hearing to ask the Court not to accept him as a witness Your Honor, this [254] is the only evidence that I will offer at this time.

THE COURT: Now I think this. Inasmuch as this is outside of the hearing of the Jury, and this is an attack upon the—

MR. RILEY: Competency.

THE COURT: No, it is not competency, it is, yes, I guess it is, as to the competency of a person to testify, but not the competency of his testimony, but the competency of a person to testify, I am going to allow it to be received in evidence, for the purposes of this hearing on the competency. I mean it might as well be part of the record, and whatever records you are going to make, but if that is all

that you have as to the incompetency of the witness Creighton to testify, I am going to overrule your motion, because it is my opinion that the incompetency of the witness must be shown according to the provisions set forth in the Statute, and the Statute provides the following: "Section 491.060. That the following person shall be incompetent to testify, One, a person of unsound mind at the time of his production for examination." Now, there is no one here who has testified or shown that there is a witness of unsound mind and Exhibit C and C-1, in its conclusion, states that he is a homo-sexual with homicidal tendency. That don't, I don't know, that may be some abnormality, but I don't know that it is proof of unsound mind, that is, that a person would be insane as a result of that. They might be just downright onery, with those tendencies, and then Exhibit [255] D, which has been offered and which will be received in the record for the purpose of preserving Defendant's record on this matter, is apparently a copy of a physician's report, purports to be a copy of a diagnosis, a conference and the result of the diagnosis of different doctors, five to be exact, and none of them show any insanity, in fact, one shows without mental disorder; anti-social reaction. And another shows his schizophrenic reaction, unclassified; another one malingerer, sociopathic personality disturbance unclassified; and another one psychoneurotic unclassified, and another one antisocial reaction with psychotic reaction, and then a final diagnosis of antisocial reaction. This man isn't committed to an asylum now, is he?

MR. RILEY: No, sir.

THE COURT: He isn't incarcerated or being held in an asylum?

MR. HENNELLY: No, he went directly from this institution to a place of isolation in Death Row.

MR. RILEY: That means nothing, your client was in the same place.

MR. HENNELLY: But he had not first been in this institution in the Penitentiary.

THE COURT: The man was in the Penitentiary and transferred over to the hospital, Hospital No. 1?

MR. HENNELLY: And then back.

THE COURT: And then back?

[256] MR. HENNELLY: And there is nothing in the official records of this institution to indicate that there has been any change in his condition from the time that he was placed in isolation in the Penitentiary.

MR. RILEY: Have you offered another exhibit?

THE COURT: He just offered these two, Exhibits C, C-1, and D.

MR. RILEY: I want to make my record on the other one.

THE COURT: I thought that your objection went to both of them.

MR. RILEY: I didn't make my record on this one. I want to make a record here on that.

THE COURT: On C or C-1?

MR. RILEY: Yes.

THE COURT: I will add to what I have said there, that the admission for this hearing outside of the hearing of the Jury is for the purposes of the voir dire examination of the witnesses to determine the sanity or insanity of the witness Creighton, and that by receiving it in evidence for the purposes as stated, does not mean that it will be received in evidence for any later purpose in the trial of this case in the nature of impeachment.

Recross-Examination by Mr. Riley

Q. Mrs. Miller, I show you what has been marked as Exhibit C and Exhibit C-1, and now can you—are there any identification [257] marks on there that shows that

was even made up in your hospital? A. Nothing only the date.

THE COURT: I can't hear you.

A. Nothing only the date, it had to be at our hospital while—because of the date on it.

Q. That is the only thing? A. Yes.

Q. I will ask you if those two exhibits aren't attached to a Missouri State Penitentiary letterhead dated in January of 1933? A. This is.

Q. Would you speak out loud? A. Yes, sir, they are.

Q. And I will ask you if that exhibit doesn't bear the Missouri State Penitentiary number of Creighton? A. Yes, sir.

Q. And nowhere does it bear your case number, number 28151? A. No, it doesn't.

Q. And can you tell the Court who made this record? A. No, I can't.

Q. Can you tell when it was made? A. No.

Q. And you can't say whether it is your record or anything about this record? [258] A. No.

Q. If the Court please, at this time we make the same objection to this one as we did to Exhibit No. D. Now I would like to have this letter and this one right here marked as our two exhibits.

Reporter marked Exhibit 14, a letter in Creighton's file, dated 5-18-54.

Reporter marked Exhibit 15, a letter in Creighton's file dated 5-18-54.

Q. Mrs. Miller, I show you what has been marked as Exhibit 14, and ask you if you can tell me what that is? A. A letter written by Dr. Cramer.

Q. Now, who is Dr. Cramer? A. Well, at that time he was Superintendent.

Q. Superintendent of what? A. State Hospital.

Q. And how do you know, do you know when this letter was written? A. No, I don't.

Q. Do you know when it was put in this file? A. No, I don't.

Q. And do you know who Dr. Cramer's secretary is? A. Yes, sir.

Q. Who is that? A. Mrs. Mary Jolly.

Q. And do you frequently file letters over there in the regular [259] course of business bearing this symbol of WYC/MJ? A. Yes, sir.

Q. You frequently file those after coming from the office of the Superintendent? A. Yes, sir.

Q. Now, I will show you what has been marked as Exhibit No. 15, and will get you to state what that is? A. That is a letter to Governor Donnelly, written by Dr. Cramer.

Q. And your testimony about Exhibit No. 14 would be the same as to this one? A. Yes, sir.

Q. As to who Dr. Cramer was and the initials on there? A. Yes, sir.

Q. Now, what are the dates of these Exhibits, Exhibits 14 and 15? A. May 18, 1954.

Q. Now, can you tell from your records here what date James Creighton left that hospital? A. May 20, 1954.

Q. Now, this May 20, you made this record yourself, did you? A. Yes, sir.

Q. At this time, we offer State's Exhibits 14 and 15.

MR. HENNELLY: I would like for the Court to read them. I have offered the whole thing already, so I can't be in a [260] position of objecting to any part of it. As a matter of fact, I offered the entire folder, because I think the whole folder is—

MR. RILEY: I would like for the Court to read those two exhibits.

THE COURT: Exhibits 14 and 15, may be received into evidence for the purpose of this hearing, upon the motion as to the credibility of the witness Creighton.

MR. HENNELLY: Competency of the witness Creighton.

THE COURT: Competency of the witness Creighton, and by the admission, the Court does not mean to say that either this or any other exhibit received with reference to this preliminary examination, outside of the hearing of the Jury, will be binding upon the Court in ruling upon further issues that may develop with relation to this witness. Now, as I understand the law, the Court is the judge of the competency of the witness for the purpose of putting that witness on the stand, at least that is the rule as to children.

MR. RILEY: That is the rule.

THE COURT: Whether children understand the nature of an oath, and the Court makes his preliminary examination to that effect. You may step down Mrs. Miller right now.

Exhibit C, having been received in evidence, reads in words and figures as follows:

[261] SOCIAL HISTORY

Re: James Creighton April 14, 1954
G.D.H.

No: W-42266

Social Data: Subject, a white male, age fifty, was born June 9, 1903, in Paris, Texas, an only child. His parents were divorced in 1913 and subject lived with both parents, going back and forth at will. He states his home life was not satisfactory. He liked school, but never had a chance to go. He did complete the 7th grade at Manitou, Oklahoma. He left home at the age of seventeen, because of a conflict with his parents. He never seemed interested in the normal type of activities as a boy. Subject mar-

ried Thelma Henderson of Breckenridge, Texas, the first time, this marriage ended in divorce in 1924 because of subject's incarceration. He married Zelma Howell the second time, in 1928, this marriage lasted only a few months. Subject's last marriage was to Velma Meek of Shawnee, Oklahoma in 1929. Two sons were born to this union. Subject and his wife were divorced in 1936. His work record was unstable, never having a job of any long duration. His occupation is listed as barber. Subject led a very nomadic life.

CRIMINAL DATA: This is subject's third felony conviction, having been convicted of the following: 6-2-22, Burglary 2nd., 2 years, State Ref., Granite, Okla.; 10-2-24, SP, McAlester, Okla., 5 years, Larc. of Auto; and 1-19-33, MSP, Life, Murder 1st. [262] He was paroled from the Reformatory at Granite, Oklahoma, but parole was revoked when he was sent to McAlester, 10-24-24. Version of Crime: See Classification Summary.

INSTITUTIONAL DATA:

Conduct: 9-17-45, Escape; 4-29-47, Setting fire to cell and burning another inmate to death; 10-7-52, Cutting another inmate; 10-14-52, Cursing the Captain.

Work: Subject has held many jobs here. He has not been able to adjust to any of them and has spent most of his time in solitary.

Health: Other than subject's mental condition, his health was considered normal.

Visits: Subject has had only eight visits while here. His last being on 6-22-52, when his son visited him.

STATEMENT OF PROBLEM: Subject has always been an institutional problem. He was first given the death sentence for his crime, but the Missouri Supreme Court

reversed the lower court's decision and he was given life. Subject's adjustment was poor from the start. He was moved from job to job and cell to cell. Sometime during the early part of his sentence he faked blindness for two years. He would use a nail to keep his eyes bloodshot. His reason for doing this is unknown. In November, 1943, he was given a chance on an assignment of trust on one of our farms. He escaped from the farm on 7-8-44, was apprehended and returned 9-15-45. On 4-29-47 subject set fire to a [263] cell and burned an inmate to death. There wasn't sufficient evidence to make a good case in Court. Subject was placed in Administrative Segregation, where he stayed until 2-25-49. On 10-7-52 subject cut an inmate. He attacked this man from the rear, slashing at his throat. The man pulled in his chin and the knife slashed him across the mouth and jawbone, which required 56 stitches to close. Subject stated he did this because the man handled his food. Subject

EXHIBIT C
LWE
7/18/55

Exhibit C-1, having been received in evidence, reads in words and figures as follows:

Case history of 4-14-54

-2-

J. Creighton Cont'd.

was placed in Administrative Segregation where he stayed until 3-22-54. On the morning of 3-22-54, subject and another inmate from Administrative Segregation were brought before the Disciplinary Committee for swearing back and forth to each other. While waiting to be called before the Committee, the other inmate tried to kill sub-

ject. The guards broke up the fight, but not before subject had a few head wounds. Subject was taken to the prison hospital for treatment. Once in the hospital room he would just sit on the floor, refusing to eat or move. He was transferred to the psychiatric ward. Subject [264] is considered a very dangerous inmate. He is a homo-sexual with homicidal tendencies. Prognosis is very poor.

Exhibit C-1
LWE
7/18/55

Exhibit D, having been received in evidence, reads in words and figures as follows:

CONFIDENTIAL: FOR PROFESSIONAL USE ONLY

State Hospital Number One	Hospital File Reference: 28151 CI.
Psychiatry and Neurology	Date Staffed: May 18, 1954
Fulton, Missouri	Physician-in-Charge: Dr. Price; sa

DIAGNOSTIC CONFERENCE EVALUATIONS
CREIGHTON, James

The diagnostic staff conference, May 18, 1954, was scheduled for the Biggs Memorial Building with the following physicians present: Wm. J. Cremer, M. D., J. Henry Fowler, M. D., Earl C. Kepler, M. D., Frank J. Nichols, M. D., and Robert P. Price, M. D. Dr. Price presented the above named individual for diagnostic evaluation, with a provisional diagnosis of: 000-x63.x1: antisocial Reaction with Psychotic Reaction. The above named physicians, and their respective diagnoses, are as follows:

Dr. Cremer: Without Mental Disorder; Antisocial Reaction

Dr. Fowler: Schizophrenic Reaction, Unclassified

Dr. Kepler: Malingerer; Sociopathic Personality Disturbance, Unclassified

[265] Dr. Nichols: Psychoneurotic Disorder, Unclassified

Dr. Price: Antisocial Reaction with Psychotic Reaction

DIAGNOSIS: 000-x61: ANTISOCIAL REACTION

sa, 5-18-54,
by direction

Exhibit D
LWE
7/18/55

Exhibit 14, having been received in evidence, reads in words and figures as follows:

18th May 1954

Henry V. Guhleman, M. D.,
506 East High St.
Jefferson City, Missouri

Re: James Creighton
MSP Reg. #-42266

Dear Doctor Guhleman:

I am today notifying the Governor relative to the transfer back to the facilities of the penitentiary, the above named individual. You may remember, this is the individual who smeared feces over himself and appeared not to notice anyone in his immediate surroundings, refusing to eat, etc.

This individual, shortly after his admission here, acknowledged voluntarily that he had malingered the entire picture in order to be released from solitary confinement. We, incidentally felt, he had some secondary thought that a [266] possible escape would be much easier for him at this institution. He does appear to be perfectly normal. All psychological and psychiatric workups indicate nothing besides his sociopathic personality situation. We are today, as stated above, requesting the Governor to transfer this individual back to the custody of the penal authorities.

Sincerely yours,

Wm. J. Cremer, M. D.,
Superintendent

WJC/mj

COPY

Exhibit 14
LWE
7/18/55

Exhibit 15, having been received in evidence, reads in words and figures as follows:

18th May 1954

Hon. Phil M. Donnelly
Governor of Missouri
Executive Office
Jefferson City, Missouri.

Re: James Creighton
MSP Reg. No. 42266

Dear Sir:

We are today writing you relative to the return of this individual to the custody of the penal authorities, as it is

the unanimous opinion of the medical staff of this hospital that he has recovered sufficiently from the symptoms that were [267] present on admission to this institution, to be returned to the penitentiary to resume his sentence.

Sincerely yours,

Wm. J. Cremer, M. D.,
Superintendent

WJC/mj

THE COURT: Now, let's call the witness Creighton out of the hearing of the Jury.

JAMES CREIGHTON,

BEING SWORN, TESTIFIED:

Questions by the Court

Q. Mr. Creighton, I want to ask you a few questions here, preliminary to you being called as a witness by the State, and outside of the hearing of the Jury. How old are you sir? A. Fifty-two.

Q. Fifty-two? A. Born 1903, 9th of June.

Q. 19th— A. 9th of June, 1903.

Q. 1903? A. Yes, sir.

Q. And where were you born? A. Well, I was born in Manitou, Oklahoma, Indian Territory.

Q. That is Indian Territory? A. Yes, sir.

Q. You are an inmate in the Missouri State Prison at this time? A. Yes, sir.

[268] Q. And how long have you been an inmate sir? A. Well, I have been there since 33, January 19th, 1933.

Q. January 19, 1933? A. Yes, sir.

Q. Where were you sentenced there from? A. Jasper County, and I took a change of venue from there and got a new trial over to Barton County, Lamar.

Q. You had how many trials? A. Well, I had two.

Q. And was there a reversal or something of your case? A. The Supreme Court reversed it the first time.

Q. And what was your sentence for? A. Rape.

Q. Well, what were you charged with, what crime? A. Homicide.

Q. Murder in the first degree? A. Yes, sir.

Q. And you received at first a death sentence and then your case went to the Supreme Court and was reversed and went back and then you received a life sentence, is that correct? A. Yes, sir.

Q. And that was in 1933, and you have been in the Missouri State Penitentiary since that time? A. Yes, sir.

Q. Did you live in Jasper County at the time of your conviction? [269] A. No, sir.

Q. Did you, where did you live, where was your home at that time? A. My home, at that time, was, I guess you would call it Shawnee, Oklahoma, that is where my family was.

Q. You were a resident of Oklahoma? A. Yes, sir.

Q. Did you, you had had some previous convictions prior to this? A. I had two.

Q. That you are now serving under? A. Yes, sir. They got it three, but it is only two.

Q. Mr. Creighton were you in the prison on the night of September 22nd, 1954? A. Yes, sir.

Q. In what was called, or referred to as Death Row, which was the night of the prison riot I presume that has been referred to, designated as, were you in a cell on that date, and at that time? A. I was.

Q. Did you know personally Walter Lee Donnell? A. I knew all of them. I celled next door to him.

Q. I mean did you know who he was? A. Yes.

Q. Would you talk back and forth in those cells? [270] A. Yes, sir.

Q. Could you hand anything back and forth? A. Yes, sir, there is a little hole there, I guess about that big around, and you push through a screen, see there is a screen stuck out about two foot and there is a hole punched through it, and you could pass stuff back and forth like letters and newspapers, etc., but there was a screen between the two cells and the hole punched through it.

Q. There was a screen between the two cells, and a hole punched through it? A. Yes, sir.

Q. Do you know and remember what occurred there on that particular night? A. I guess I do.

Q. On this particular phase of this examination, do you have any questions you want to ask, either of you, Mr. Riley you may ask anything you wish. Probably Mr. Hennelly should go first, it is he who has filed the motion. I don't want you to go into the details. I think this goes to the competency.

Examination Outside of the Hearing of the Jury by Mr. Hennelly

Q. Mr. Creighton, were you an inmate at the State Hospital? A. Yes, sir.

Q. How long were you up there? A. Oh, something like thirty-five days I guess.

[271] Q. Had you ever been up there at anytime before that time? A. No.

Q. Had you ever been confined to any mental institution prior to that time? A. No.

Q. Have you ever been in solitary confinement in the penitentiary prior to that time? A. Yes, sir.

Q. How long were you in solitary confinement? A. I guess about eighteen months.

Q. Eighteen months straight? A. Something like that.

Q. While you were in the State Hospital, were you strapped down? A. No.

Q. Sir? A. No.

Q. You were treated by a number of doctors up there, were you, examined? A. Well, I wasn't treated, I was examined.

Q. Did you attempt to slash a man's face just before you went up there? A. I didn't attempt to, I did.

Q. That was before you went up to the State Hospital? A. That is right, about eighteen months before I went to the Penitentiary. That is what I was in solitary for, if that [272] is what you are driving at.

Q. Did you kill any other people in the penitentiary? A. No, sir.

Q. I think Your Honor, that there is nothing else I want to go into.

THE COURT: Do you have any questions Mr. Riley?

MR. RILEY: No, I am satisfied, that the Court has asked enough questions.

Examination by the Court

Q. What were you sent to the State Hospital for, what was it? A. Well, I played crazy to go there, to tell you the truth about it. See, they have a system up there.

Q. System where? A. In the Penitentiary, that if you go to Fulton for thirty days—that is thirty days after you get back you get out of solitary on the yard and I had been over there about eighteen months, and so I thought up that deal and so I took the Fulton route to tell you the truth about it. They put it on there that I was going to escape and everything. You can't tell your business you know, because you can't get out of solitary see, and that is what I went over there for.

Q. And you got out of solitary and over to Fulton? A. No, this riot came.

Q. Then they put you back where? [273] A. Back for the thirty days, like they do new guys.

Q. In solitary? A. Yes, sir. This is a common practice in penitentiaries. I was trying to take advantage of the tradition over there and go to Fulton.

Q. Were you ever taken before a Probate Court to your recollection? A. No.

Q. And committed as an insane person? A. No.

MR. HENNELLY: I have another question Your Honor.

THE COURT: All right.

Examination by Mr. Hennelly

Q. Number 1, were you ever in a psychopathic ward of the Penitentiary? A. Before you mean I went to Fulton?

Q. Yes. A. No.

Q. Were you in there after you came back? A. I was in there after the riot, yes, they put me up there after the riot.

Q. All right. Did you ever attempt to commit suicide? A. When I went to Fulton?

Q. Yes, sir. A. Yes, sir, I did, I put them on a good act, yes.

[274] Q. While you were in Fulton or in the Penitentiary? A. In the Penitentiary before I went over there.

Q. I have no further questions Your Honor.

Examination by Mr. Riley

Q. Now Jim, why were you in the Penitentiary Hospital after the riot? A. Well, they put me up there like they did everybody else, and moved them around.

Q. What was the matter with you? A. Nothing.

Q. After the riot? A. Well, the only thing, my jaw was broke, and my lip and everything was cut up. They

had me on Three, and they had so many up there, and so they moved me up on Five.

Q. You stayed in the hospital? A. Yes.

Q. And your jaw was broke in two places? A. Yes, sir, two places.

Q. Wired shut? A. Yes.

THE COURT: Now then, in regard—I presume after this offering, you are renewing your motion?

MR. HENNELLY: Renewing my motion to have the Court declare, as a matter of law, that this witness is incompetent, in view of the hospital records from Fulton Hospital.

[275] THE COURT: That motion will be denied, and the witness will be permitted to testify. Now then, it is 9:20 and I believe we had better recess for the night, and you can take charge of the Jury. The witness is here too Mr. Sheriff, who is going to take charge of him?

THE SHERIFF: A deputy will.

THE COURT: Bring the Jury back in Mr. Brent.

THE COURT: Gentlemen, I want to say right at this point, that there are a number of times during the trial of a lawsuit, when it is necessary for the attorneys and the court to have conferences, as you have seen us have them, and there are many times during the trial of a lawsuit where it is necessary to exclude the Jury for matters to be taken up before the Court. Sometimes there are matters relative to the admissibility of testimony, competency of testimony and things of that kind that come up, which have to be determined before the Court can pass upon them, and until it can be determined whether that testimony shall or will be admissible into evidence, the Jury has to be excluded because there may be some matters that come up in the presentation of that, that are not proper to be presented before the Jury. I just merely wanted to say that, because we excluded you here a while ago, and you have been out for quite sometime, and it has taken a little bit

of time to go into one or two matters that have developed, relative to some of the testimony in this case, some of the [276] admissibility of the testimony. Now, you are not to think that there is anything that is being withheld, or that there is any particular motive in keeping things from the Jury. It is necessary under our rules of procedure sometimes for counsel and the Court to have conferences, and for—sometimes for the Jury to be excluded so that we can talk over some matter relative to the testimony. It has taken some little time, little more than I thought, and the next witness that will be called will take some considerable time in his testimony, and so it would be impossible to have his testimony now this evening, continue with it, so I think this is probably as good a time as any to recess, and I imagine that it may be past the bedtime of some of you anyway. During the evening recess, arrangements have been made by the Sheriff to house you at the hotel, and remember the previous admonition of the Court, that you are not to speak to anyone about the case, or you are not to separate or straggle away or get away from each other when you are going to and from the hotel, and when you go to your room in the hotel, stay in your room, and don't try to get out of your room and get down the hall, or away from the rest of the Jury. Don't read anything about the case, don't discuss the case among yourselves, or don't permit any person to speak to you about the case. There are no radios I presume in those rooms are there?

[277] THE SHERIFF: No, sir.

THE COURT: I believe that is all then Mr. Sheriff, and you will arrange to take this Jury to breakfast in the morning, and you will do that before you bring them up here. We will reconvene in the morning at nine o'clock, and you will have to get them up in time Mr. Sheriff to get their breakfast. Goodnight Gentlemen.

And thereafter to-wit: On the same day, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 426) Monday, July 18th, 1955, Regular July 1955 Term

Now at this time, it being time for evening recess, it is ordered by the Court that this cause be laid over to 9:00 A.M. July 19th 1955.

And thereafter to-wit: On the 19th day of July, 1955, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 428) Tuesday, July 19th, 1955, Regular July 1955 Term

Now on this day, comes again the said parties, Prosecuting Attorney of Cole County for the State, and the defendant in person and by his counsel Mark Murray Hennelly, and also comes again the jury herein impaneled and sworn to try this cause. [278] Whereupon trial is resumed and progresses in the hearing of the evidence herein.

JAMES CREIGHTON,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. James M. Creighton.

Q. Mr. Creighton, you were sworn last night before we recessed, weren't you? A. Yes, sir.

Q. Mr. Creighton, you are an inmate at the Missouri State Penitentiary, aren't you? A. That is right.

Q. What sentence are you serving? A. Life.

Q. Is that for homicide or murder? A. Yes, sir.

Q. When did you enter the Penitentiary? A. January 19, 1933.

Q. Will you speak loud enough for all the jurors to hear you? A. January 19, 1933.

Q. And you have been convicted of any other crimes? A. Yes, sir.

Q. What crimes is that? [279] A. Burglary and car theft.

Q. When was the, do you recall when the burglary was? A. 1922.

Q. 1922? A. Yes, sir.

Q. Where was that? A. In Frederick, Oklahoma.

Q. And what was the other one? A. Car theft.

Q. And when was that? A. Hughes County in Oklahoma, in 24.

Q. Now, on September 22nd, 1954, were you confined in the Missouri State Penitentiary? A. I was.

Q. And where were you confined? A. In B basement, Death Row.

Q. Now Creighton, I will ask you to turn here, to look at what has been identified as State's Exhibit No. 1, and take this ruler and indicate on that exhibit, if you can, where you were confined? A. I was here in 17, the end cell.

Q. Did you know an inmate by the name of Walter Lee Donnell? A. Yes, sir.

Q. Where was he in Death Row that night? A. 18, next door to me.

Q. You know an inmate by the name of Stidham? [280] A. I do.

Q. Is he in the Court Room today? A. Yes, sir.

Q. Will you point him out? A. Right over there.

Q. And what name do you know him by? A. Slick Stidham.

Q. Do you know an inmate by the name of Rollie Laster? A. Yes, sir.

Q. I will ask you if Stidham and Laster were in Death Row on the night of September 22nd? A. Yes, sir.

Q. Mr. Creighton, prior to the night of September 22nd, when did you start celling in Death Row? A. Well, I don't remember the exact date, but I think it was around May.

Q. Do you know when Stidham started celling in Death Row? A. No, I don't to be exact.

Q. Do you know about when?

MR. HENNELLY: Object, if Your Honor please, it would call for a conclusion and would be hearsay.

THE COURT: Well if he knows that he was there, and knows about when he was there, he may testify as to the approximation of the date.

Q. You may answer.

[281] THE COURT: Overruled.

Q. About when? A. About June, I imagine.

Q. Now Creighton, did you hear any, you know where Stidham was celling, what cell he was in? A. The best I could indicate, would be around on the other side of the bathroom. See, the bathroom, I could point out here on the chart, along about middleways, I don't know exactly here, or not, I can't see, it don't seem like I can read, but somewhere along in here though, the bathroom is, about middleways of the hall, I don't exactly know what cell.

Q. I will ask you if prior to September 22nd, you overheard any conversation between Stidham and Walter Lee Donnell? A. Yes, I heard conversation, cussing the kid and calling him every kind of a name.

MR. HENNELLY: Object to the latter section, not responsive, and for the reason it is wholly irrelevant and immaterial and don't tend to prove or disprove any issue in the case. The question was did he hear any conversation.

THE COURT: Yes, and the answer to that can just be yes or no. The objection will be sustained, but you

may answer the question yes or no, did you hear any conversation between—

A. Yes, sir.

Q. The Defendant Stidham, and Walter Lee Donnell? A. Yes, sir.

Q. Now your answer to that is what? [282] A. Yes, sir.

Q. All right. Now I will ask you to relate to the Jury what that conversation was?

MR. HENNELLY: Object, if Your Honor please, for the reason that that is totally irrelevant, immaterial to any point. The time and place has not been set, and for the reason that—

THE COURT: Well, I think you have gone far enough, I think the time and place— I presume he testified to where it was, but as to the time, I think you are proper in your objection to that, so the approximate or exact time should be fixed, prior to September 22nd, 1954, the conversation that you say you heard between Donnell and Stidham, was it before September 22nd?

A. You mean what transpired?

THE COURT: Was the conversation before September 22nd, was it in point of time, was it before September 22nd, when you heard this conversation that you testified you heard? A. Yes.

THE COURT: Now when?

A. Well now, as to the date, it was every day and night to just cuss him and ridicule him.

Q. How long a period of time, when was it, without telling what it was, when was it? A. From the date they got down there.

Q. Date who got down there? [283] A. Stidham and Laster.

Q. All right, you may proceed then with your questioning.

MR. RILEY: You can go ahead and tell the Jury just what you heard.

A. Well, I didn't know the kid.

Q. Who is the kid? A. Donnell, and they commenced calling him a bunch of rats and mother-fuckers.

Q. Who did that? A. Laster and Stidham.

MR. HENNELLY: Object in respect to Laster, and ask that that be stricken as hearsay and not binding on this defendant.

THE COURT: I believe I will sustain that objection at this time. Confine your testimony to the Defendant Stidham, and the objection will be sustained as to Laster, Gentlemen of the Jury, that part is stricken as to a person by the name of Laster.

Q. Creighton, just go ahead and tell what Stidham did and what he said. A. He said they ought to kill him over in E Hall when they broke out over there.

MR. HENNELLY: Object to that, and ask that it be stricken and the Jury instructed to disregard it, and a mistrial declared, for the reason it is an attempt to put the Defendant's reputation at issue, and totally irrelevant and immaterial and [284] not responsive.

THE COURT: Is this statement you have made something that the Defendant Stidham said?

A. Yes.

Q. To Walter Lee Donnell? A. That is right.

THE COURT: The objection is overruled. Now, let's proceed on the question and answer basis, so that the witness isn't given too free a reign in his testimony, because there may be parts of his statement that are not pertinent or material to the issues in the case. All right, you may proceed. The objection is overruled, and the request for the mistrial is denied.

Q. Mr. Creighton, did you ever hear the Defendant Stidham curse Donnell? A. Certainly.

Q. How often did he curse him? A. Why every day and night.

Q. Well, what do you mean by every day and night? A. Just ridiculed him when he had odd times, and hollered down there and cussed the kid.

Q. Now, how often did that occur, over what period of time did that occur? A. From the time he got down there to the night of the riot.

Q. Did you ever hear him threaten him in any way? [285] A. Certainly.

Q. What did he say? A. Said he was going to kill him if he ever got out or got to him.

Q. What else did he say? A. Why he said, when they come in here and get us out, we are going down there and kill them both.

MR. HENNELLY: Object now for the reason that these things, these questions should be more on point of time, rather than every day. I am going to object for the reason that the time has not been placed for this last statement.

THE COURT: Well, fix the time Mr. Prosecutor of this last statement.

Q. Creighton, during the period of time, beginning with the time that Stidham moved into Death Row, did you have an opportunity—and up to September 22nd, did you ever hear Stidham say that he was going to kill Donnell?

MR. HENNELLY: Object again, if Your Honor please, for the reason that does not sufficiently fix the time to the degree of particularity with which this witness could be cross-examined on. I think it is too broad, indefinite and speculative, and gives this witness a roving commission. It goes from June I think, or May, until September 22nd.

MR. RILEY: If the Court please, anytime prior to the night of September 22nd, is material.

[286] THE COURT: That is right. I have ruled on that, that he may testify as to what conversations took place, or what statements were made by the defendant from the date in June, which he estimates as the time that the Defendant came in that section of the prison, up until, or before September 22nd. Now, I gathered from one piece of the testimony here that this witness has testified to a statement that took place on the 22nd, and I asked the State to approximate the time of the last statement, and not—I think we had better go back in the record Mr. Ehlers, to the next to the last question, and answer of this witness.

THE REPORTER: Q. What else did he say? A. Why he said when they come in here and get us out, we are going down there and kill them both.

THE COURT: Now, that is the statement that I want the State to fix the time on, where the Defendant said, I am going to kill you if I ever get out to you, when was that statement made? A. Well, that was made Judge, oh, from the time he got down there, every day and he ridiculed him and was calling him everything in the world.

Q. Now Creighton, lets go to the evening of September 22nd, 1954, did you hear any statements on that, did you hear a commotion there that night? A. What do you mean?

[287] Q. Anything unusual? A. What do you mean commotion?

Q. Inside of the Penitentiary? A. Well, yes, are you talking about the riot?

Q. Well, I am asking you, did you hear anything or see anything unusual? A. I want to know what I should say, I don't want him objecting all the time.

Q. Well, did you hear or see anything unusual on the night of September 22nd? A. On the night of Septem-

ber 22nd, I noticed a fire out there in the stockade and lighting the place up.

Q. Now, about what time did you notice that? A. Now Mr. Riley, I didn't have no watch and I didn't know exactly what time, but I imagine it was around six or six-thirty or somewhere in that neighborhood.

Q. Now, did you overhear any conversation between Stidham and Donnell after you saw the fire? A. Well, yes, he was going to come down and kill him and I both when he got out, soon as they got out down there to him.

Q. Did you hear any conversation, who was? A. Stidham.

Q. Did you hear any conversation between Stidham and anyone else? [288] A. Laster, yes.

Q. And what was that? A. Well, about coming down there, and as soon as we get out, and hollering up to the door.

MR. HENNELLY: Object to that, too vague, indefinite and speculative, doesn't fix who made the statements.

THE COURT: Who made the statement? A. Stidham and Laster was both hollering.

MR. HENNELLY: With respect to Laster's statements, I ask that that be stricken.

THE COURT: This is on the 22nd? A. Yes, sir.

Q. Did you hear any conversation between Stidham and you know DeLapp? A. Certainly.

Q. What name does he go by? A. Curley.

Q. Now, did you hear any conversation between Stidham and DeLapp? A. Well, hollering back and forth from the door.

Q. Will you tell this Jury just what you remember hearing? A. Well, first that I heard was kind of a lull that he hollered where are you at, old man.

Q. Who said that? A. Slick Stidham said who is that, and he said it is Curley, [289] and DeLapp, and he

said we are coming after you, and so I don't know, maybe two or three minutes they worked and then they stopped working, and he hollered, said, well we can't get to you, and he said, well, he commenced to begging and hollering and all, and got hysterical and panicky and was hollering for them to come on down and get him, and come around there to the window.

Q. Who was hollering for them to come on down? A. Stidham was.

Q. And do you know where DeLapp was at that time? A. Well, he was out the front door I guess. They was out there hammering, and they hadn't gotten into the cage, I know at that time.

Q. Did you overhear any other conversation with Stidham and DeLapp, when DeLapp was at any other place? A. Well, they had several conversations, but some of it I couldn't hear and some of it I could hear.

Q. Just what you heard. A. Well, he talked about the men going back up and starting to work again, and coming—

THE COURT: Who talked to who?

A. Stidham talked DeLapp into going back to go to work and let them guys go to work, and so they finally broke into the cellblock.

Q. Now, prior to that, do you recall whether or not Stidham [290] was talking to anybody at the windows of B basement? A. DeLapp come around to the window, that is when he talked the men into going back and working on the door.

Q. Who talked him into going back and working? A. Stidham. Well, Laster, he helped too.

Q. Now, during this time, did you overhear any conversation between Stidham and Donnell? A. Well, he was hollering down there, we'll be down to get you two old dogs as soon as we get out.

Q. What did he say he was going to do to you? A. Kill us.

Q. Did he say why he wanted to kill him? A. Why he was supposed to have gone to the Grand Jury or took the stand.

MR. HENNELLY: Object to the form of that answer, for the reason it is a conclusion and it is too vague, indefinite and uncertain.

THE COURT: Yes, it should be the statement, the question was, that was asked, did the defendant Stidham say why. Now don't give your opinion of why, of what the why was, you may tell what he said, if anything.

A. Well, he said he was coming down to kill us both, Donnell and I.

Q. But did the Defendant Stidham say why he was going to kill Donnell? [291] A. Well, he said that all the time up to the night of the riot.

MR. HENNELLY: Object to it for the reason it is not responsive, and ask that the answer be stricken.

THE COURT: The statement hasn't been made and the objection is overruled. Mr. Creighton, the State, the thing that the Prosecuting Attorney is asking you is what the statement was, he is asking you first did he say why, and then what was that statement, that is what he wants. A. Because he went before the Grand Jury.

Q. Now, what was the statement, what did he say, what was the actual words used? A. Well, he said, you took the stand against Thompson and them in St. Louis before the Grand Jury.

MR. RILEY: Now Creighton, did you ever see Stidham out of his cell?

A. Did I ever see him out of his cell?

Q. Yes, that night? A. Yes.

Q. All right, where was he? A. In front of my door.

Q. And who was with him? A. Well, Hoover, DeLapp, and Kenton and Vidauri, and Laster and Noble.

Q. Mr. Creighton, I show you what has been marked as Exhibit 7, [292] do you know what that is? A. Well, that is inside of the cage.

Q. Now, do you see any lights on that picture? A. Yes, up here in the ceiling.

Q. All right. Do you know what happened to those lights? A. Yes, sir, DeLapp crawled up on these bars here and knocked them out with a club through the bars.

Q. Now, where was Stidham when he did that? A. He was up the, run up here somewhere.

Q. And then you say these seven men were down in front of your cell? A. Yes.

Q. Now, all right, what happened there? A. Well, DeLapp, when he knocked all these lights out, he run them all outside of the cage here.

Q. Run who out? A. Sir?

Q. Who did he run? A. The convicts, you know how they gang up, get curious, and all gang up down there.

Q. Now, did he run these seven, Vidauri, Hoover, Noble— A. No, they came on down inside. They came on down and joined them in the cage and came on down to our cells.

Q. Who came down to your cell? A. Well, Stidham and Laster and Noble and Kenton and Vidauri and Stidham.

[293] Q. Hoover there? A. Yes, sir, Hoover.

Q. DeLapp? A. Yes, sir, DeLapp.

Q. What happened there? A. Well, they tried to get my door open.

Q. Now, just how did they try to get into your door? A. Well, when they walked up, Stidham walked up kind of silent Joe in front of the door, and stood there, and Kenton commenced trying to unlock the door.

Q. Who had the key? A. Kenton.

Q. Was Stidham there? A. Yes, and Laster.

Q. What did Stidham say? A. He said, I am going to settle the score with you two old dogs.

Q. Now, who was the two old dogs? A. Donnell and I.

Q. Tell what else happened there? A. Well, they fooled around with the door a little bit and finally one of them got me in the mouth, and I got ahold of the club and took it away and jabbed them off the lock.

Q. What were you jabbing with? A. Looked like the back of one of them long green chairs we got up there.

[294] Q. About how long was it? A. Well, must have been that long.

Q. Are you indicating about three or three and a half feet? A. Something like that.

Q. Now, I will show you what has been marked as State's Exhibit No. 9, and ask you if you saw that or a similar instrument? A. Well, they used something similar to that, a large hammer to knock that screen down to try to reach around out of my way to where I couldn't punch them.

Q. I will show you what has been marked as Exhibit No. 10, do you know what that is? A. Yes, sir. Here is what I was trying to say about this screen.

Q. Do you know what that is a picture of? A. Yes, sir, this is the outside of the cage and the cell, whatever you want to call that.

Q. Going back to the sledge hammer, who had the sledge hammer? A. Well, Noble had it at the time.

Q. What did he do with it? A. He beat this screen down see, to—so he could reach around so I could not reach in here. See, I am in this cell, and they put the key in the lock and tried to unlock it see, and he couldn't get his key

in there, and so they went on over to Donnell's cell and unlocked it.

Q. Now, just a minute. Did you see Noble do anything else with [295] that sledge hammer? A. Yes, I seen him hitting at Donnell's foot—

Q. And where was Donnell's foot? A. In the back of the door.

Q. Well, you couldn't see that could you? A. No, I couldn't see that, but I could tell from the way he was hitting, what he was trying to do.

MR. HENNELLY: Object to that as being a conclusion and ask that it be stricken and the Jury instructed to disregard it and a mistrial declared therefor.

THE COURT: Sustained, and the answer may be stricken, but the request is denied.

Q. What could you see him doing? A. Swinging a sledge hammer.

Q. What did he say? A. I heard him telling him to get your foot back you sonofabitch.

Q. Were you injured there Creighton? A. They broke my jaw in two places, and busted my—

Q. Who broke your jaw, how did your jaw get broken sir? A. How?

Q. How did your jaw get broken? A. They punched me with that pole and that is when I got the pole away from them.

Q. Who was doing the punching? [296] A. Hoover.

Q. Now, after you got the pole away from them, what did you do with it? A. I turned it around and punched them.

Q. And was Stidham there? A. Certainly he was. He wasn't there to where I could get to him, he backed off.

Q. Did they try to open your door with a key? A. Certainly.

Q. Why couldn't they open it?

MR. HENNELLY: Object if Your Honor please.

THE COURT: Yes, that calls for a conclusion.

Q. Did you do anything to the lock in your cell? A. Certainly.

Q. What did you do? A. I put concrete in there and my comb and stuffed it all full of junk as I could so they couldn't get the key in it.

Q. Well, while they were doing that, did you hear this defendant say anything to Donnell? A. Well, they was all cussing and telling me they would be over to get me next.

MR. HENNELLY: Object to that, not responsive, too vague and indefinite.

THE COURT: He asked you if you heard the Defendant James Stidham, say anything to Donnell?

[297] A. Certainly, said he would be over to get him next.

Q. Now, what did you see next? A. Well, when they all, when they got the door open, they all went in that cell.

Q. All right, now did you see them go in? A. You can't see them go in the door, you could see them go up to the door, seven of them, you can't see, there ain't no way you can see a man go in that door, you can see him leave there, but you can't get around that screen without you seeing him, see. There is no way that you can walk around this screen here, but there was seven of them all went in there. At least they got out of sight. I don't think there was any way they could get up there.

MR. HENNELLY: Object to that last section, and ask that it be stricken, and the Jury instructed to disregard it, and a mistrial declared.

THE COURT: The statement, they got out of sight, may stay in the record. The balance of the witness' answer may be stricken from the record, and the Jury in-

structed to disregard it. The request for a mistrial is denied.

Q. Creighton, who went up to that door? A. Well, Stidham, and Kenton and Laster and Noble and Hoover, and Vidauri.

Q. DeLapp there? A. Sure.

[298] Q. And what did you hear then? A. Well, I heard this kid hollering, I ain't no rat, I ain't no snitch.

Q. Now, this kid, who is this kid? A. Donnell.

Q. What did he say? A. He said, I ain't no snitch, I ain't never harmed you boys, and begging them, and pretty soon he was going oh, oh, and he hollered real loud, and then he got kind of gurgling, and you know how a man—

Q. You just tell this jury what you heard. A. Well, I just told you what I heard.

Q. Then what happened,— A. Well, they all run out of there like a bunch of rats..

MR. HENNELLY: Object to that, and ask that it be stricken and the Jury instructed to disregard it, and a mistrial declared.

THE COURT: The objection will be sustained and the answer may be stricken. We are not interested in your conclusions.

A. Well—

THE COURT: He asked you what they did, and you can tell that without telling your conclusion. Now Gentlemen of the Jury, you disregard the last statement. The request for a mistrial is denied. The last question was, what did you see them do?

A. Well, see Judge, I could see them go around this screen, I seen them all run out of there and go up the walk.

[299] Q. Is that the last you saw of them that night? A. Yes, sir.

Q. Now, was there any lights down there? A. Well, there was light from the stockade and the building burning out there, and them white walls, tile, it just lit the place up like a country church.

Q. Now, was there buildings burning in back? A. Well, the chapel was burning and the shops out in the stockade, what we call the shops.

Q. Show, if you can, the direction of the chapel that was burning. A. Well, the chapel was down there on the end, and out here in the stockade and in front of the cell is where the buildings were.

Q. Now, who is the next person you saw? A. Well, the next person I saw, I guess was Mr. Barton, the Highway Patrolman.

Q. Do you have any idea Creighton, how long after these seven were down there that it was before Barton came in? A. No, it seemed like an awful long time, but I wouldn't estimate it.

Q. Were you still locked in your cell? A. Yes, sir.

Q. And was that Lieutenant Barton? A. Yes, sir.

[300] Q. The Highway Patrolman? A. Yes, sir.

Q. Now Creighton, during the whole time of the evening on September 22nd, was there any shooting in Death Row, or B basement? A. None whatsoever.

MR. HENNELLY: Object to that for the reason your Honor that would be a conclusion on the witness' part.

THE COURT: Sustained as to the form which the question was asked. This witness may answer if he heard any shots.

Q. Creighton, did you hear any shots fired in Death Row? A. No.

Q. Did you hear any bullets flying around? A. No.

Q. I believe that is all.

Cross-Examination by Mr. Hennelly

Q. Mr. Creighton, at any time prior to today, has there been any offer made of any kind to you by the prison authorities or by the Prosecuting Attorney, with respect to a parole of any kind? A. None whatsoever.

Q. Never been any talk about that at all? A. No.

Q. And you are up here testifying and you have never even [301] discussed with them anything about anyone doing anything for you, for your testimony, is that right? A. That is right.

Q. Now, is everything else you have testified here just as true as that? A. That is right.

MR. RILEY: If the Court please, I object to the form of that question, and arguing with the witness.

THE COURT: Sustained.

MR. RILEY: And I ask that counsel be reprimanded.

THE COURT: Well, the objection is sustained to the question, and the question and answer are both stricken.

Q. Very well. Now then, when did you say you got into Death Row Mr. Creighton? A. Sometime in May, I don't know the exact date.

Q. Where had you been just prior to the time that you got into Death Row? A. I had come back from Fulton, or they brought me back.

Q. Fulton Hospital? A. Yes, sir.

Q. And how long had you been in Fulton? A. Well, I don't know, to be exact, something like five or six weeks.

Q. Five or six weeks? A. Yes, sir.

Q. Now, had you gone up to Fulton after you had slashed— [302] A. I didn't go up there, they took me up there.

Q. Well, did they take you up to Fulton after you had slashed an inmate's face with a knife? A. About eighteen or nineteen months later.

Q. I see. And I am going to ask you, did you ever attempt to commit suicide? A. Well, I put on a pretty good act to go to Fulton. Now will you let me tell you why I went to Fulton?

Q. No, just answer the questions. Did you attempt to commit suicide? A. Well, I don't know whether you would call it an attempt, I put on a pretty good act, I done about everything I could.

Q. You put on a pretty good act, you done everything a man could conceive of doing to get out of the Penitentiary, is that right? A. No, sir, wasn't trying to get out of the Penitentiary.

Q. Trying to get to Fulton? A. I was there for thirty days trying to get on the yard.

Q. And you would have done almost anything to do that, wouldn't you? A. No, I wouldn't have done almost anything.

Q. Now, let me ask you this, did you at anytime while you were there, did you go to the toilet in your hand and wipe that on your face? A. No.

[303] MR. RILEY: If the Court please, that is highly objectionable and doesn't prove or disprove anything in this case.

THE COURT: Well, the question was asked and the answer is already in.

A. No.

MR. HENNELLY: May I make a statement to the Court outside of the hearing of the Jury?

THE COURT: I am—well, let me ask you this, come up here. (Out of the hearing of the Jury) This last question and the answer are already in the record, and they may stand, but do you propose to pursue this matter further?

MR. HENNELLY: Your Honor, I think that having raised the question of this man's competency and his san-

ity, that I am going to certainly ask the Court to make it a Jury question. I am submitting it to the Jury as a Jury question, and I am going to submit an instruction to the Court on that matter, and I intend, and that was the reason I had pursued it.

THE COURT: The Jury are the judges of the credibility of the witnesses, but not of the competency to testify. As I understand it, it is the Court's prerogative to pass upon whether or not a witness can be permitted to testify, and there has been no showing up to this point, of any statutory incompetency of the witness. One statutory incompetency for instance is age, and another may be insanity, and there has been no showing of any insanity of this witness. In fact, [304] the Court, out of the hearing of the Jury last evening had this witness on the stand and observed his manner and his demeanor on the stand, and his manner in which he answered questions, and the way in which he conducted himself, the apparent ability of the witness to know about or to recollect incidents about which he was asked, and therefore the Court determined from the testimony that was offered, and also from the observation of the witness himself, and in hearing his answers to questions asked him by the Court, came to the conclusion that the witness was not an incompetent witness. Now, that has been passed upon by the Court. Now then, you would be entitled of course to cross-examine this witness on any matters relative to his credibility. For instance, the State has already asked him whether he has been convicted of previous convictions and that goes to the credibility of the witness. I think you should have some leeway in—you have shown already here by these questions that he was sent over to the hospital, Hospital No. 1 at Fulton.

Q. I won't pursue it further Your Honor.

THE COURT: Well, all right.

Q. Now then Mr. Creighton, on the night in question, you had been in Death Row for approximately how long on the night of September 22nd? How long had you been in Death Row? A. Since May I told you.

Q. Since May? A. Yes, sir.

[305] MR. RILEY: You will have to speak louder, I didn't hear you.

A. Since May.

Q. Every day and every night during that time, you heard the Defendant making these remarks that you have indicated to the Jury, to Donnell, is that right? A. That is right.

Q. Can you indicate on State's Exhibit 1, where Stidham's cell was? A. What is this?

Q. I am sorry Mr. Creighton, that is the plat in back of you there. A. Oh, it wasn't so far up here, about middle ways.

Q. About middle ways? A. Yes, you can hear your voice that far easy, when you are talking.

Q. He hollered at him down there did he? A. Yes, sir, that is right.

Q. Was Mr. Stidham's cell on this side, and I am now indicating on State's Exhibit 1, toward the Gate No. 3, was it toward Gate No. 3, or was it on the other side of the shower room? A. Well, maybe you can see it better if you will show me where the bathroom is, maybe I can indicate better to you.

Q. Let me ask you this, don't you see very well Mr. Creighton? A. Well, I could see well enough, but that fine writing, and this far from it.

[306] Q. Is it pretty hard for you to make things out? A. It is there, yes.

Q. All right. Now, let me ask you this Mr. Creighton, on the night in question, which was September 22nd, was the first thing that you saw the fire burning, or was the

first thing that aroused your attention, some noise of some kind?

THE COURT: By burning, you mean a fire—

Q. I am sorry, I think the Court is correct. A. I saw the fires burning Judge.

Q. What was the first thing that aroused your attention as being unusual that night?

THE COURT: The fires or the noise?

A. The fire out in the stockade and the convicts running is the first thing.

Q. Had you heard that pounding or that noise in B basement before the time that you saw the fire? A. No.

Q. And how much time after you saw the fire did you hear that noise, that pounding? A. Well now, I wouldn't estimate it, but it wasn't long. I wouldn't estimate it.

Q. A half hour? A. Something like that.

Q. All right. Now, incidentally, were the windows open that night? A. Yes, sir.

[307] Q. All of the windows were open, is that right? A. Yes.

Q. All right. Now then, you knew Shaky didn't you, Captain Dietzel? A. The guard that was on duty?

Q. Yes. A. Yes, sir.

Q. Had he made his second round that night when you first heard that noise? A. Second round? I don't know if they make any special rounds.

Q. You don't recall, do you recall seeing him at all that night? A. Yes, he brought the paper down.

Q. Brought the paper down? A. Yes, sir, after supper.

Q. All right. Now during that time, during the time that you heard this noise, is it your testimony that they continued to holler back there, is it your testimony that Stidham continued to holler down at Donnell? A. Not continuously, no, not for all that noise was going on, and he was hollering to the other fellows then.

Q. All right. Did he holler at him anytime that night? A. At who?

Q. At Donnell, did Stidham holler at Donnell at anytime that night? [308] A. Yes, sir. He said, I will be down and get you, you son-of-a-bitch.

Q. Be down to get you, you son-of-a-bitch? A. Yes, sir.

Q. Was he referring to you, or was he referring to Donnell? A. He was referring to Donnell and I both, both of us.

Q. You both accepted that, is that right? A. Yes, sir.

Q. Now then, I am going to ask you, you made some reference to some talk about appearing before a Grand Jury in the Thompson matter at St. Louis. When was the first time you heard Thompson's name mentioned by anybody in Death Row? A. Well, it was the first day they moved down in B basement.

Q. The first day they moved down? A. Yes, sir.

Q. So that if we understand your testimony correctly Mr. Creighton, this thing happened every day and every night, this hollering at Donnell? A. Certainly, whenever he would go out for a bath or shave or anything else.

Q. Now, how often would you get out of there for a bath and a shave? A. I don't know, to be exact, but I guess you would say fifteen minutes for a shave and haircut.

Q. Where would you go, into that shower room? [309] A. To bathe, yes.

Q. And would more than one of you get out at a time? A. No, just one at a time.

Q. Just one at a time? A. Yes, sir.

Q. When you came out, in order to go to the shower, was there a guard there with you, or did somebody let

you out and you could run around there by yourself? A. No, a guard would come down there and take you out.

Q. A guard came down? A. Yes.

Q. And once one was in Death Row—strike that. Did you, as an inmate of Death Row at anytime from May of 1954, until September 22nd, 1954, get outside of that gate, or were you always in the cage generally? A. They would take you outside of that gate to shave you and cut your hair.

Q. Now, where was that that you would go to get a shave and get your hair cut? A. Right up here in the front.

Q. And was there, that would be one at a time, is that right? A. Yes.

Q. And now can you tell us how often you would get out in order to take a shower in that shower room? A. Once a week.

[310] Q. Once a week? A. Yes.

Q. Now then, after these men had been pounding and after you heard these conversations between Stidham and Donnell, about how much time elapsed, if you know Mr. Creighton, from the time you heard the first pounding, until those men got through? A. Well, I wouldn't estimate the exact time. Under those circumstances, you don't remember every little detail, and I had no time piece, and no way of telling exactly.

Q. Was it dark yet when they got through? When they broke through? A. Yes, it was getting dark.

Q. Just getting dark? A. Yes.

Q. And can you give this Court and Jury any idea of the amount of time, was it two hours or three hours later? A. Well, no, I wouldn't say it was three hours.

Q. Sir? A. Might have been an hour and a half or two hours.

Q. Hour and a half or two hours? A. Yes, something like that.

Q. Now, who was the first person—strike that. Let me ask you this. How wide are those cells, if you know? A. I don't know.

Q. All right. You know how deep they are? [311] A. Well, I imagine about eight or nine foot.

Q. Eight or nine feet deep? A. Yes.

Q. And I am going to ask you, this screen, is there a screen up along the side of each one of those cells? A. In between each cell, yes.

Q. All right. Now, on the night in question, which was September 22nd, who was the first person that you saw among the group that broke in? A. The first person that I saw?

Q. Yes. A. DeLapp I guess.

Q. DeLapp? A. Yes.

Q. Now, can you, did you hear them break in, did you hear the original break through that door, that gate 3 there? A. They broke through three doors.

Q. Sir? A. They broke through three doors.

Q. Well, the last door, the door which permitted them to get down into Death Row, do you recall now whether or not you heard that final break through there? A. No.

Q. I see. And I will ask you, when you saw DeLapp, who was with DeLapp at that ime? A. He was up knocking these lights out by himself.

Q. He was by himself knocking the lights out? A. Yes, sir.

Q. Did he have a stick of some kind? [312] A. Yes, sir, a club.

Q. And was he up on the ceiling, or how was he doing that sir? A. No, he come up on the bars on the outside and was reaching in through the bars and knocking the lights out.

Q. Did he knock out all the lights? A. Yes, sir, all of them.

Q. Now, I will ask you sir, with respect to your cell, was there a light in your cell? A. No, I turned mine out.

Q. Now, tell the Court and Jury how you turned that light out? A. I had a piece of pasteboard and a magazine all rolled up, and I just twisted it.

Q. I will ask you if the light was on in Donnell's cell? A. He said it wasn't, I don't know. He threw his shoe at it. He said that was the only way he could get it out.

Q. Was you in such a position that you couldn't see whether or not there was any light coming out of cell 18? A. Well, I didn't see none. I could see his light was out, but I didn't see it shine out on the wall.

Q. Let me ask you, do you know of your own knowledge whether the light was out or on in cell 18, which was Donnell's cell? A. It was out.

Q. It was out? A. Yes, sir.

Q. So that at least at this time your light was out, the light [313] in Donnell's cell was out, and DeLapp had knocked out the rest of them himself, is that correct? A. That is right.

Q. Now then, with respect to the cell right next to you on the other side, which would have been— A. There was no cell on the other side of me.

Q. Well, not on the other side of your cell, but on the other side of Donnell's cell, do you know who was in that cell? A. Nobody in that cell.

Q. That cell was empty? A. Yes, sir.

Q. All right. Now, aside from the lights, from the light that came from the fires, after Delapp got in, and he had knocked out all the lights around there, there wasn't any light on? A. There was one on the end, there was a light on the end, it was burning, he couldn't reach that. It was outside of the cage, see this is the cage, see this is the

walkway around the cage, and it goes half way there and there is a partition to keep them from going all the way around the cell block, and right in here, there is a light up at the corner.

Q. Now, that light was on? A. That light was on.

Q. Now, as DeLapp was knocking out those lights, did you see Stidham? [314] A. Not at that time, no.

Q. How much time, after you saw DeLapp knocking those lights out, was it until you saw Stidham? A. I guess about ten or fifteen minutes.

Q. Ten or fifteen minutes? A. Yes.

Q. And when you saw, during those ten or fifteen minutes, were there a lot of convicts milling up and down there? A. There had been, wasn't then, no. He run them all out as he went up knocking them lights out.

MR. RILEY: Who run them all out? A. DeLapp.

MR. HENNELLY: DeLapp? A. DeLapp.

Q. Now, let me ask you this, can you give the Court and Jury any idea of about the number of men that were milling back there? A. Well, there must have been maybe a hundred or a hundred and fifty.

Q. A hundred or a hundred and fifty? A. Yes, sir, there was a crowd in there.

Q. And they were, did they have weapons with them? A. No, they was on the outside of the cage, they wasn't on the inside of the cage.

Q. Did they have, any of them have any knives or sticks or brickbats or anything like that? [315] A. Oh, some did, yes.

Q. Some of them did? A. Walking along knocking the windows out and stuff like that, and breaking them.

Q. Now, you say that about fifteen, or ten or fifteen minutes after DeLapp knocked the lights out, that is when you saw Stidham, is that right? A. Yes.

Q. Now, when you saw Stidham, where was he at the first time you saw him? A. Walking up in front of my door.

Q. Had you had any conversation with Stidham from the time DeLapp started to knock those lights out? I mean until you saw him those ten or fifteen minutes later? A. Had I had any conversation?

Q. Yes, did he say anything to you? A. In this fifteen minutes?

Q. Yes. A. He hadn't said nothing to me.

Q. You didn't see him? A. Not until he walked up in front of my door.

Q. You said in ten or fifteen minutes, is that right? A. No, sir.

Q. Now, when he walked up in front of your door, who was with him then? A. Kenton, Hoover, DeLapp, and Noble, Vidauri and Laster.

Q. And you could recognize all of them, could you? [316] A. Yes, sir, the light was there, they was between me and the light.

Q. They didn't have anything on them to keep you from trying to recognize them, did they? A. No.

Q. I see. And what happened when they came up to your cell? A. When they came up, they were there cussing and ridiculing us, and calling us sons-of-bitches.

Q. Were some of them calling you stool pidgeons and a snitch? A. No, they called us old dogs.

Q. Old Dogs? A. Yes, sir.

Q. And is it your testimony Mr. Creighton that one of them had a stick of some kind? A. Hoover did.

Q. Now, Hoover had a stick I think you indicated, according to the record, to be three or three and a half feet long, is that right? A. Yes, sir.

Q. Now, did he reach in at you with that? A. No, he punched it through the bars like that.

Q. Now, did you jump back at that time? A. I automatically throwed my hands up and when I did, he pushed the stick inside of the cell and I grabbed it.

Q. Now, did you go to the back of the cell at that time? A. No.

[317] Q. Did you come right up to the front part of the cell with those seven men there indicating they wanted to get at you? A. Certainly.

Q. You didn't go in the back and stay in safety in the back of the cell? A. No, I didn't.

Q. Your light was out by that time? A. Yes.

Q. All right. Now, what did Stidham say to you at that time? A. He stood up there and made some remark about your time is coming or something.

Q. Now, how long did those men stand at your cell? A. Now, you are getting ahead of yourself. You asked me about the stick now.

Q. Now, please just answer my question. A. They got away as soon as I got the stick.

Q. Just answer my question.

MR. RILEY: He said they got away from there as soon as he got the stick.

Q. All right. Now, which way did they go then? A. Over to Donnell's cell.

Q. Now then, had you been hit in the jaw yet at that time? A. No.

Q. And who was the one that hit you? A. Hoover.

[318] Q. Broke your jaw? A. Yes.

Q. And knocked you down? A. No, didn't knock me down.

Q. How many licks did they get at you Mr. Creighton? A. Only one lick, only one lick punched me.

Q. But that didn't knock you down and that didn't cause you to go in the back of the cell, you came up right near the front? A. It didn't knock me out, I know that.

Q. All right. Now, after that little incident, after they had hollered at you and reached in with the stick, and one of them punched you in the head— A. They punched through the bars.

Q. Punched through the bars, all right, I believe your testimony is that they knocked down that screen which is indicated on State's Exhibit 10, is that right? A. See this screen here?

Q. Yes. A. They ripped that down so they could reach around here and get to this lock.

Q. All right. Now then, did they then proceed directly over to Donnell's cell? A. Soon as I kept punching out through here, over this way, and they seen they couldn't get my door unlocked, and me with that club.

[319] Q. They then went immediately over to Donnell's cell, is that right? A. Yes, sir.

Q. Now, after they got over to Donnell's cell, tell the Court and Jury again what happened Mr. Creighton? A. Well, they opened, they tried to open his door and unlock it, and was standing there hitting at his foot and telling him to get his foot back you son-of-a-bitch.

Q. Who said that? A. Noble.

Q. Noble made these remarks to him? A. Yes, sir, and was swinging that sledge.

Q. And swinging that sledge hammer? A. Yes, sir.

Q. That was Noble, is that right? A. Yes, sir.

Q. And then did they get inside of Donnell's cell? A. Yes, sir.

Q. Now, at that time the lights were out in your cell and the light was out in Donnell's cell, is that right? A. Yes, sir.

Q. Now, how long would you say it was before you heard this remark, "I ain't no snitch", and those matters that you referred to the Court? A. Just as soon as I heard the door go back and they walked in [320] there.

Q. Would you say immediately he said, "I ain't no snitch"? A. Yes, sir.

Q. And was it just a matter of seconds until you heard this oh, oh, that you referred to? A. Yes, sir, about a matter of seconds.

Q. Matter of seconds? A. Yes, sir.

Q. And then you saw all these men run out? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, you didn't see who killed Donnell, did you? A. No, I couldn't see it through this wall.

Q. Is it your testimony that the next person you saw was Lieutenant Barton? A. After they left, yes.

Q. When you saw Lieutenant Barton, was the light on in your cell then? A. No.

Q. Still out? A. Was when I left, yes.

Q. All right. Now, did Lieutenant Barton come down with a flashlight? A. Yes.

Q. And was there any water around there? A. Yes.

[321] Q. How deep was the water, if you know sir? A. Oh, I don't know how deep it was. It was all over the floor.

Q. All right. And did he shine the, did Lieutenant Barton shine the light in your face into your cell? A. Yes.

Q. All right. Was there anybody with Lieutenant Barton at that time? A. Oh, there was several guards and several Highway Patrolmen that I didn't know.

Q. About how many of them were there, would you say, would you say there was seven or eight people there together? A. There might have been twenty.

Q. Might have been twenty of them that came down, is that right? A. They was all crowded all the way out and all the way to the hospital.

THE COURT: He is talking about in front of the cell.

A. Well, Lieutenant Barton and several Patrolmen and the guards were outside of the cell.

Q. Mr. Creighton, do you recall testifying in the Laster trial in Jefferson City? A. Yes, sir, oh, yes, sir.

Q. I am going to ask you if certain questions were asked you and certain answers given by you in that trial. Was there some [322] lawyers asking you some questions there when you were testifying for the State up there then? A. Yes.

Q. I am going to ask you if these questions were asked you and this answer given. Questions by Mr. Riley: "Q. After this bunch left Donnell's cell, what happened then? A. Well, they went up to the front and stayed around a while and finally a couple came back to see if he was dead." Do you recall that question being asked you and that answer given in the Laster trial? A. That was a prisoner, yes.

Q. So, as a matter of fact, some people did come back then before Lieutenant Barton got there, is that right? A. Yes, before, yes, before Barton and the guards got down there, yes.

Q. So that when you said nobody had come back, you were mistaken about that, were you? A. Well, I just left that part out.

Q. You just left that out? A. Yes. There was a lot of time lapsed.

Q. Now, how much time would you say elapsed from the time those lights went out until Hoover punched you in the head? A. Well, it wasn't over fifteen minutes.

Q. I am going to ask you, I am going to ask you if you recall testifying—

[323] MR. RILEY: I don't know what this is here.

THE COURT: Come up here gentlemen. (Out of the hearing of the Jury)

MR. RILEY: I don't know what this is here, this transcript that he is now reading from, but unless he has the Court Reporter here who took it, to prove that it is correct, I am going to object to it.

MR. HENNELLY: I have here an official authenticated transcript of this witness' testimony in the case in Kansas City, in the DeLapp case, and I am going to ask this witness whether certain questions were asked him in the DeLapp case, and certain answers given by him.

MR. RILEY: It isn't a part of a bill of exceptions which has been approved in the regular manner. Now, I don't know what is in there. Before it could be competent, it would have to be approved by the respective attorneys and the trial Court or have the Court Reporter here to testify.

THE COURT: Well, of course, now the testimony of any person in a trial may be used for the purpose of impeachment, even if there wasn't a transcript of the trial made for appeal. Of course if the witness denied making the statement, it then is incumbent on the Defendant to produce someone to identify a transcript.

MR. HENNELLY: That is the answer.

MR. RILEY: All right.

[324] THE COURT: I think counsel has to be in good faith, I mean they can't just pick up something out of nowhere and pretend they are reading, and I presume from the transcript here, it shows a certification on the back of this, that this was a transcript of the testimony.

MR. HENNELLY: I certainly wouldn't do that, under any stretch of imagination.

THE COURT: All right, you may proceed.

Q. I am going to ask you if you recall testifying in the DeLapp case at Kansas City? A. Yes.

Q. On June 7th and 8th of this year? A. That is right.

Q. I will ask you if you recall certain questions being asked you by lawyers in Kansas City, and certain answers being given by you? A. Sure.

Q. Is that right? A. Sure.

Q. Now, I will ask you if this question was asked you and this answer given, "Q. Hoover,— I am sorry, how long after the lights were out did Hoover come up and punch you? A. Well it must have been thirty minutes I guess, things like that, you just don't—", and then there are some statements by counsel. "Q. About thirty minutes? A. You don't remember the exact time when things like that happen. Q. In your best [325] estimate, it was thirty minutes after the lights were knocked out that Hoover came up and punched you? A. Yes, sir." Were those questions asked you and those answers given in the DeLapp case? A. That is right.

MR. RILEY: May I see that?

MR. HENNELLY: Yes.

Q. I am going to ask you if you recall any colored fellow and a white fellow coming down after those men had tried to get at you, some half hour later, come down with a flashlight to your cell? A. I said that is the two that came down to see if Donnell was dead.

Q. Did they have a flashlight with them? A. Yes, sir.

Q. Had a flashlight? A. Yes.

Q. Now then Mr. Creighton, when was the first time you were convicted of a crime, in what year? A. 1922.

Q. 1922? A. Yes, sir.

Q. What were you convicted of then? A. Car theft.

Q. How old were you then sir? A. About seventeen.

[326] Q. Sir? A. Seventeen I think.

Q. Were you convicted in Oklahoma of burglary second degree and given two years? A. That is right.

Q. And then you were convicted of larceny of a motor vehicle were you, and given five years, is that right? A. That is right.

Q. Now, were you convicted of robbery, I am sorry, I withdraw that Your Honor.

MR. RILEY: Now, if the Court please, I object to him asking if he was convicted of some crime, unless he is prepared to prove it. He asked a question for a yes or no answer, and then withdraws the question.

MR. HENNELLY: I withdrew the question.

THE COURT: All right, the question is withdrawn.

Q. Now, when were you convicted of murder? A. Well, I believe it was in January, the trial started January 11th, and I was sentenced on the 18th, I think.

Q. 18th of what? A. January.

Q. Of what year? A. 1933.

Q. And after you got to the Penitentiary, did you leave the Penitentiary at one time? A. I walked off from the farm.

Q. You walked off? A. Yes, sir.

Q. They had you out on a farm and you walked off, is that right? [327] A. After I had been there about ten years.

Q. After being there about ten years? A. Yes, sir.

Q. Were you ever tried for that? A. No.

MR. RILEY: If the Court please, counsel knows that life termers can't be tried for escape.

MR. HENNELLY: Come up here please Mr. Riley.

THE COURT: Let's make an objection without making a statement.

MR. HENNELLY: I object to counsel stating the law Your Honor, as I presume Your Honor will state the law, and I don't know whether that is the law or not. I don't

know of anything in the law that so says. The question was, was he tried for it.

THE COURT: Do you wish to make an objection to that question Mr. Riley?

MR. RILEY: Object to it for the reason that the statutes of the State of Missouri, provides that any convict confined in the Penitentiary, or being in the Penitentiary, and out under guard for a period of years less than life can be convicted of escape and no other. That is the statute and that is the way the statute reads, for a term less than life.

THE COURT: Well, the objection will be sustained, for the reason given, and for the further reason that it is not material to the issues in this case, whether he walked off or whether he didn't walk off, or whether he was tried or [328] wasn't tried. We are trying James William Stidham and you may ask him whether he has been convicted, but that is all.

MR. HENNELLY: May I represent to the Court that this man is in Cole County, and that I ask it for the purpose of showing interest, and if there are some crimes that they can still charge him with, and this man has testified for the State, I don't do it to affect his credibility, I do it to show interest.

MR. RILEY: Are you going to prove that he was in Cole County when he walked off?

MR. HENNELLY: I am not going to prove anything, I am just asking him a question.

THE COURT: The objection is sustained to the question asked, as to whether or not he was tried for walking off. He admitted that he walked off, or left.

Q. Are you being held in the Penitentiary now? A. No, I am held in the Cole County jail.

Q. You are in the Cole County jail? A. That is right.

Q. Do you know a Mary Annis?

MR. RILEY: If the Court please, I fail to see the materiality of whether he knows Mary Annis, object to it for that reason, doesn't prove or disprove any issue in this case.

THE COURT: What is your purpose?

MR. HENNELLY: Come up here. (Out of the hearing of the Jury) [329] I have been given some information to the effect that these prisoners are being held in the Cole County Jail, and that they have access to a prisoner by the name of Mary Annis, who is also over at the Cole County Jail, and that is one of the continuing reasons why he has an interest in the case. I do it for the purpose of interest and for the purpose of determining just, showing his interest and his credibility.

MR. RILEY: I don't see where the interest is.

MR. HENNELLY: If someone has arranged to give a life termer access to a woman and while he is under sentence and then he is testifying for the State, I think that is a matter which goes to his credibility and shows his interest.

THE COURT: We would never get through with the trial of this case if we went into everything. We might even find out how many times he goes to the toilet and things of that kind. The objection will be sustained.

MR. HENNELLY: I want to make an offer of proof on it.

THE COURT: All right.

MR. HENNELLY: I want to prove by this witness that he is presently stationed in the Cole County Jail, and that while he is in the Cole County Jail, that he has access to one Mary Annis, who is over at the Cole County Jail.

THE COURT: Has access?

A. Access, and he can visit her in her cell or she in his.

THE COURT: And that is all your offer of proof is, you just want [330] to show that?

MR. RILEY: I would like to ask counsel now if he is prepared to prove that Mary Annis is in the Cole County Jail?

MR. HENNELLY: There is a question before the Court, I am not going, I am asking him a question, nobody asking me a question.

MR. RILEY: I am asking you.

THE COURT: And I have a right to know whether there is any foundation to the question. You can't just inject matters into the trial of a lawsuit, that is the reason I called counsel up here, when the objection was made, to determine what line of testimony it was that was being elicited, so that I could determine whether or not it was material, and whether I should overrule or sustain the objection.

MR. HENNELLY: If the Court asks me, I will tell you that the Defendant is in receipt of information from the Penitentiary that this is the situation.

MR. RILEY: If the Court please, that is hearsay, founded upon hearsay.

MR. HENNELLY: All he has to do is answer yes or no.

THE COURT: By my ruling on this matter, I want the record to be clear, and counsel to understand that I am not, and don't intend to preclude the defendant from showing by questions or otherwise, the interest of this or any other witness. They may be asked, and in fact you have asked this witness at the outset whether he was promised anything or made any promises in [331] order to make his testimony, and you certainly have a right to inquire as to the interest of a witness. The offer of proof that has been made, relative to this particular question doesn't show, in my opinion, any materiality. However, I don't

think it would, in view of what counsel for the defendant has said, I don't think it would make much difference whether this question was answered or not. I think the witness may answer the question as to whether or not he knows, or does not know a Mary Annis. He can answer that yes or no, and then as far as anything else connected with the offer of proof, I don't think with this witness at least that it ought to be pursued. I think counsel has a right to inquire as to the interest of the witness however.

MR. HENNELLY: Excuse me, I want to ask him further if he is permitted, if he has been permitted to visit Mary Annis in her cell, or if Mary Annis has been permitted to visit him in his cell, during the time that he has been in the Cole County Jail.

THE COURT: And to that, you intend to object.

MR. RILEY: Yes, sir.

THE COURT: And to the objection that is made to that offer of proof, the objection will be sustained, but the witness may answer whether he does or does not know Mary Annis. The question Mr. Witness is, do you know a Mary Annis in the Cole County Jail?

[332] A. Yes.

THE COURT: Now the record may show your offer of proof and the objection to it, and I sustained the objection.

MR. HENNELLY: I have no further questions Your Honor.

Redirect Examination by Mr. Riley

Q. Creighton, did you see anyone else, other than the seven that you have named, go into Donnell's cell? A. At the time he was killed?

Q. Yes. A. No.

Q. I believe that is all Your Honor.

MR. HENNELLY: No further questions Your Honor.

THE COURT: You may take charge of the witness. You may step down. We will take a short recess.

THE COURT: (Out of the hearing of the Jury) Since the recess I have been thinking about the matter that I just previously ruled on, and the offer of proof that was made by the defendant, and that the record might be clear, I think I did say, that I recognized that the Defendant has a right to show the interest of the witness, to affect his credibility as a witness, but I may not have made it clear enough, and I want to restate, for the purposes of the record, that I believe the defendant would have a right to show, I don't think this was contained in your offer of proof, but I am making this statement so that there will be no misunderstanding about my ruling. I think the [333] defendant would have a right to show by asking the witness Creighton, if he had been made any promises, or had been offered any inducements to testify in this case, through some arrangement with Mary Annis or anybody else, that it might be. I didn't want to preclude you from asking that question. I think you have a right to inquire of this witness if there has been some deal or some arrangement made, whereby he is to have any special privileges in return for his testimony, and then he may answer that question of course yes or no, however he wants to answer it, but I wanted you to understand by my ruling, that I didn't want to preclude you from showing the interest of the witness in that regard. I just didn't think that the offer of proof that was made was material to the way that it was made.

MR. HENNELLY: Very well Your Honor.

THE COURT: So, if you want the witness called back.

MR. HENNELLY: Your Honor, I think that the offer of proof was that I asked him if he has had, whether he was allowed—

MR. RILEY: You asked him whether he was allowed to visit Mary Annis in her cell, and whether he was permitted to visit her.

THE COURT: My point is that that is an immaterial matter, doesn't prove or disprove any issues in this case. I think the witness can be asked whether or not—in order to show his interest, whether or not he has any deal or any arrangements for [334] his testimony, and that this was part of it, or something of that kind, but I think to just ask him a question, whether he visited her back and forth in the cell, that doesn't prove or disprove any issue in this case.

MR. HENNELLY: I think it is a Jury question with respect to the general circumstances which surround his being in the County Jail as a life prisoner, when all the rest of them are in the Penitentiary.

THE COURT: The only question as to that particular witness, whether they believe or disbelieve his testimony, isn't what the arrangements or motive or anything might be, only insofar as those things would affect his credibility as a witness. It would be the same as proving, trying to discredit a witness' testimony by specific acts of immorality. You can't prove a witness' incredibility by specific acts.

MR. HENNELLY: You can show his interest by specific acts.

MR. RILEY: I might say to the Court here that there hasn't been any offer of proof to show that I, as Prosecuting Attorney, or the State of Missouri as Plaintiff in this case, have ever made any arrangements for this testimony.

THE COURT: That is right, but I think the Defendant would have the right to ask the question, and then how they wanted to follow it up from there on, that would be a matter to pass upon at a later point in the trial, but I think that they can lay the foundation for proof to prove

the bias or prejudice, or [335] what is the word I am trying to think of.

MR. HENNELLY: The interest?

THE COURT: Yes, the interest, yes, the interest of the witness. All right, at least the record shows that the witness, the Court will permit the witness to be recalled in line with the statement of the Court here.

MR. HENNELLY: My original offer of proof still stands as to that question.

THE COURT: Yes. But I wanted you to understand by my ruling on the original offer of proof, that I didn't mean to imply that you were precluded from inquiring as to the interest of the witness. I don't think the Court's Statement is sufficient to destroy whatever the effect of that question and answer might be. I take the position that with that offer of proof and that that would in and of itself be evidence for the Jury to consider, whether or not he had any interest in the matter.

THE COURT: All right.

HERMAN TROUT,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. State your name please. A. Herman Trout.

Q. Mr. Trout, will you speak up loud enough so all the Jurors can hear you? [336] A. Yes, sir.

Q. Mr. Trout, you are an inmate at the Missouri State Penitentiary? A. That is right.

Q. And where is your home? A. You mean where I am staying now?

Q. Before you went to the Penitentiary, where was your home?

MR. HENNELLY: Object to that, totally irrelevant and immaterial.

Q. All right, I will withdraw it. I will ask you if in 1928 you were convicted of a crime, the crime of rape? A. Yes, sir.

Q. And sentenced for two years? A. Yes, sir.

Q. And if in 1931, you were convicted of the crime of larceny of an automobile and sentenced to two years? A. Yes, sir.

Q. And if in 1937, you were convicted of robbery? A. Yes, sir.

Q. And if in 1952 you were convicted of assault, no, robbery and kidnapping? A. Yes, sir.

Q. And are you presently serving that sentence in the Missouri State Penitentiary? A. Yes, sir.

Q. How old are you Mr. Trout? [337] A. Forty-five.

Q. On the night of September 22nd, 1954, what part of the Penitentiary were you in? A. Well, I was in the main body of the Penitentiary.

Q. What building? A. You mean when the riot broke out?

Q. Yes. A. In B and C Dining room.

Q. Where did you go from there? A. Well, I went over to E Hall to investigate the noise that I heard and when I seen it was a riot I went back and told my plumber's helper.

MR. HENNELLY: Object to this conversation between this witness and the plumber's helper.

Q. Don't tell what you told your helper, tell what you did. A. I came back and told John Dallas.

MR. HENNELLY: Object to what he told—

Q. Don't tell what you told him, say what you did. A. Oh, well I went over there to see what was going on, and I seen the riot was in progress, so I came back to my shop where I worked.

Q. Where is your shop? A. In B basement, what you call B basement.

Q. Now Trout, I will ask you to turn around and look at State's Exhibit No. 1, and can you point out on that exhibit where your shop was? [338] A. Yes, sir. This is my shop here and this is a part of the shop where the supplies were kept and below that shop is the boiler room where the water and heat is made, and turned on for B and C Hall and these are the steps leading down into B basement and C basement, and this is C side and this is B side.

Q. What did you do then, do you recall Trout, about what time that was? A. Yes, it was between six and six-thirty.

Q. All right then, what happened? A. Well, I taken my plumber's helper and we got the tools which might have been a benefit to the other people.

MR. HENNELLY: Object to that statement if Your Honor please, that is not responsive and I think it is a voluntary statement and a conclusion on the part of the witness.

THE COURT: Well, overruled, the question however, is what did you do, and just tell that. Tell what you did.

A. We taken the tools from this place, this room here, and this room here and we went below this room here to the boiler room and we got to the boiler room we hid the tools and then we came back up the stairs and this being a door here with a screen door on here, and this door here was a plain door, we decided that we would take one door—

MR. HENNELLY: Object to this section if Your Honor please, this includes certain elements of hearsay.

[339] Q. Don't say what you decided, just say what you did.

THE COURT: Sustained.

A. Well, I took—

THE COURT: May I explain to the witness Mr. Trout, that we are not concerned with things that you might, statements like you decided to do this or you decided to do that, we want to know just what you did, just your actions. You may tell that without telling what your decisions were before you made those actions.

A. Well I stood in front of this door a while and in front of this door a while and then later there was a boy came down by the name of DeLapp and a boy named Kenton followed him down a few minutes later, and this door here led to Death Row. They went to work on this door here with some sledge hammers and crowbars and picks and other small tools and they continued to work on this door and he had bad luck working on this door and had to send out and get some tools, DeLapp sent Kenton and Hoover out after some tools.

Q. Now, this Hoover, is that William R. Hoover? A. Yes, sir.

Q. You know him, don't you? A. Yes, sir.

Q. And this Kenton, is that Paul Kenton? A. Yes, sir.

Q. Paul Edward Kenton? [340] A. Yes, sir.

Q. You know him? A. Yes, sir.

Q. All right. A. So after a few minutes they returned with the tools and brought them back and turned them over to DeLapp. They continued to work on this door. Well, they couldn't get the door open, so DeLapp asked them to quit hammering, and Kenton also asked them to quit talking and hollering, and he hollered back into Death Row, this is Death Row, and said "Slick, this is Curley DeLapp." He said, "We will be in to get you if it takes, costs us hell or high water." And he had trouble relaying that message down to Death Row, and two or three times this was repeated over and over.

Q. Did you hear Slick, or Stidham answer? A. Well, I don't know whether it was him that answered, but when Hoover would holler someone would answer him, to the name of Slick Stidham.

Q. Who did you say was hollering? A. DeLapp, Curley DeLapp.

Q. Well, you just said Hoover. A. If I said Hoover, I didn't mean Hoover, I meant DeLapp.

Q. Now then, what happened? A. Well, Hoover had got down there by this time, and him and Kenton and DeLapp, Hoover, Kenton and DeLapp, they held a conversation right here in front of this door. Then it was [341] decided—

MR. HENNELLY: Object to this, that will be a conclusion.

THE COURT: Sustained.

Q. Don't tell what they decided, just tell what they did. A. DeLapp sent Hoover and Kenton out to burn the buildings, so they went on up these steps here and went out into the population, and I don't know where they went after they left there, but they did go out and come back, and when they got back, DeLapp asked them if everything was taken care of, and he said yes.

MR. HENNELLY: Object to this conversation for the reason it is hearsay and not binding on this defendant and no connection shown with it.

Q. It will be all right to strike that.

THE COURT: All right, it may be stricken.

Q. Don't say what anyone said, unless you are asked to say it, just tell what they did. A. Well, Hoover and Kenton came back and wasn't gone very long, I don't know the exact minutes they were gone. He came back and when Hoover came back he walked in this door and he sat down on a five gallon paint bucket.

Q. What was in that paint bucket? A. Knives.

Q. What kind of knives? A. Knives being used at the twine plant to cut twine with, with [342] probably a five or six or seven inch blade.

Q. All right, go ahead. A. And after they brought these in here, they put a boy by the name of Vidauri to watch these knives. And about that time, there was a boy came down these steps here with another party and their names are Blake and Noble. They came down and joined Vidauri. So DeLapp he was still trying to work this door and somebody produced an acetelyne torch and brought it down these steps and set it about here where they tried to get through this door here, but they couldn't get this torch to work, they tried to put gas in it and they called DeLapp over here to this step here and talked to him.

Q. Don't say what they said. What happened next, don't say what they said. A. Well, they decided to disband.

MR. HENNELLY: Object again, if Your Honor please.

THE COURT: Sustained, don't tell what they decided, tell what they did.

Q. Tell what they did. A. Well, they loitered around here until DeLapp had opened this door, but until, before they got this door open they decided to go through this wall here. So they came in this door here.

Q. Now, who went in that door? A. Noble and DeLapp and Red Stoots and a boy by the name of Bates [343] and a boy by the name of Miller, and Hoover, Kenton, and there was a number of guys that went in there and out while this work was being tried on this door, leading, it is not a door, they was trying to make a door through this wall here.

Q. How did they try to make that door? A. With a sledge hammer.

Q. Did you see them? A. Yes, sir.

Q. Could you see into that room? A. Yes, sir.

Q. Which wall were they beating on? A. Right there.

Q. At this time, we offer State's Exhibit No. 12.

THE COURT: This is the room that has previously been identified by other witnesses as the inside wall of the Christian Science Room, and the classification room?

MR. RILEY: Yes, sir.

MR. HENNELLY: The record can show that I am going to object and except to its introduction.

THE COURT: I think this witness should first be handed this exhibit to see if he recognizes it.

Q. All right. I show you what has been marked as Exhibit No. 12, and I will ask you if you know what that is? A. Yes, sir.

Q. What is it? Don't show it to the Jury until you tell the [344] Court. A. This is the hole in this wall here leading to Death Row.

Q. Did you see it there that night at anytime? A. Yes, sir.

Q. Is that photograph, does that photograph correctly represent the scene there at the time? A. Yes, sir.

Q. At this time we will offer it.

MR. HENNELLY: The Defendant will object to the introduction of Exhibit 12, for the reason no proper foundation has been laid for its introduction, and for the reason it is hearsay and to introduce it under these circumstances would be in violation of the Constitutional Rights of the Defendant.

THE COURT: Overruled, it may be received in evidence. What is the number of that?

MR. RILEY: Exhibit No. 12.

THE COURT: Don't look at the legend on the back Gentlemen of the Jury, just look at the front of the picture.

Q. All right Trout, well, what happened next? A. They tried to go through this wall to Death Row. This was unsuccessful and they went back and went to work on this door here and DeLapp asked a bunch of boys to get back and give him plenty of room to work and so he used quite a number of men, some of them, I don't know, and I didn't recognize, but they was successful in opening this door, and they failed to [345] go through this hole here to Death Row. Now, after they got this door open, they had to go through the third door which was right here.

Q. Is that the third door or second door? A. Second door. This leads to what you call the kitchen in Death Row.

Q. Then there is a third door leading to Death Row? A. This would be the door to Death Row. This is the cell here and here is the outside screen and you can go down the outside, and you don't need to use that door, but if you want to go in Death Row, you have got to open this door, but you first have got to open the second door before you can open the third, so they proceeded to knock this door open. DeLapp had bad luck getting this door open. So he had Noble and Kenton both beating on this door and two or three guys that I didn't recognize. Then they decided that they would take a left handed man to open this door, as you see here the lock is on this side of the door. So if you try to hit that lock right handed, you can't hit it right handed. You can't get no power on the sledge, and they sent out and got a colored man to knock this door open. DeLapp, when he was delivered down there to DeLapp, DeLapp told him, I want you to knock that door open, and he hit it about ten licks and this door came open and Dietzel, Captain Dietzel was in this corner here. Kenton and Noble taken charge of Dietzel, held him captive [346] sitting on a table right there until this third door was opened. After they taken him over, then Noble went back

and DeLapp, they went to work on this door here, and didn't take long to get this door open, because—

Q. Now Herman, when was the first time that you saw the defendant Stidham? A. Well I saw the Defendant Stidham, it was after the door was opened, they came up this aisle with DeLapp in front.

Q. Where did they go? A. Came out here and stopped right there.

Q. Now, who was there? A. Stidham, Laster, Noble, Kenton, Vidauri, and Miller and Hoover, and a number of guys that weren't so spectacular.

Q. Did you hear any conversation between Stidham and any of the others that you have named? A. Yes, sir, I heard DeLapp when DeLapp turned this corner right here, and he said, "Get back men, they are coming out now." And he brought them on out here and they stopped here and DeLapp, he put his arm around Stidham's shoulders, and he said, "Gentlemen I have brought you this far, this is your leader from here on."

MR. HENNELLY: Object to that, and ask that it be stricken and the Jury instructed to disregard it, and a mistrial declared.

THE COURT: Overruled.

[347] Q. Then what happened? A. Stidham said, "Well men, I am ready to work." So they went across this hall here, and went into this room here, where the knives were being kept and guarded by Vidauri and Noble and some of the other boys, mostly Vidauri. So after they were in there a few minutes, they came out and went back to this door here, through this door here and back into Death Row.

Q. Just a minute, did you see the Defendant Stidham with a weapon? A. Yes, sir.

Q. When did you first see him with a weapon? A. I seen Stidham with a weapon when he went through this door here.

Q. You mean going back down? A. Yes.

Q. And did DeLapp have a weapon that you saw? A. Yes, sir.

Q. And what about Noble? A. Noble had a weapon.

Q. What about Vidauri? A. Vidauri had a butcher knife.

Q. And was Vidauri, did Vidauri make any statement there in the presence of the Defendant Stidham? A. Yes, he told Stidham, Stidham told him, he said you go ahead [348] standing right here by this door, and Vidauri said, no, I am going with you, I am all the way with you guys. So he too went back through this door.

Q. Did Vidauri say anything else? A. Well, he walked up and down here with a butcher knife in his mouth while they was getting this door open.

Q. All right, go ahead, and then what happened? A. Well, they went down in Death Row and back in Death Row and stayed back there a few minutes and then they brought the guard out, Captain Dietzel out, and brought him up through here, brought him up these steps, and on up in B Hall.

Q. Who brought him out? A. Well, Kenton and Noble was on one side and Laster and Stidham was right behind him, and then you couldn't tell about how many was trying to get to him, looked like some of them were trying to stab him in the back.

MR. HENNELLY: Object to that, and ask that it be stricken, and the Jury instructed to disregard it, and a mistrial declared.

THE COURT: Well, the objection will be sustained to what it looked like. That answer may be stricken. The witness may testify what he saw and not what it looked

like. He can just tell, and the Jury will determine what it looked like, that is their problem. The objection is sustained and the request for a mistrial is denied.

[349] Q. When was the next time you saw Stidham? A. The guard was taken upstairs and then later they came back down the stairs.

Q. Now, who is they? A. Noble, Kenton and Stidham and Laster and Vidauri and Hoover and there was two or three guys back in there.

Q. Did DeLapp go upstairs? A. DeLapp?

Q. Yes. A. Did he go upstairs?

Q. Yes. A. Yes, sir.

Q. Did he come back down? A. Yes, sir.

Q. Now, did they all come down in a group? A. No, sir. Some of them, this railing is at the top of these stairs, and some of them come this way and some come this way. They all went to this door back into Death Row.

Q. What happened then? A. Well, after they were gone a few minutes, why they was gone down in Death Row and then they came back out, and Hoover and Noble came to this door here and they got some more tools out of there.

Q. What kind of tools? A. Sledge hammers and a crowbar.

Q. Now, I will ask you to look at the sledge hammer there, which has been marked Exhibit No. 9, and I will ask you if you [350] ever saw a sledge hammer, that sledge hammer, or one similar, similar size there? A. Similar size, yes, sir.

Q. You don't know whether it was that one or not? A. I don't know if that is it or not.

Q. All right. Who did you say got that sledge hammer? A. Noble and Hoover.

Q. All right. Where did they go with it? A. They went back into Death Row with it. They went back through this door and back down to Death Row, and then after they were gone a few minutes, I heard the hollering kick up again, and there was—

Q. I can't hear you. A. I say the hollering kicked up again.

Q. All right. A. And there was quite a bit of hollering back there and they was gone quite a while.

Q. Now, were there lots of inmates down in B basement that night? A. Yes, sir, there was. There was, sometimes there was quite a number and sometimes they thinned out for a while.

Q. Now, this time that you speak of, these seven going back in Death Row, how many inmates were down in B basement? The Death Row side, if you know? A. There was one or two men down there besides the Defendant, but that is all.

[351] Q. Where had the rest of them gone to? A. DeLapp came up the outside of the corridor here with a board and he waved all of them upstairs, he said men go upstairs. He said go to B Hall, we are going to put up at B Hall on top, and he asked them all to leave there. And a boy by the name of Fisher was cooking in this corner, and he told him to get his stove and eggs and bacon and go to the top floor of B Hall, and that is where they would make their stay for their demands.

Q. What is the next thing you saw? A. Well, after they, after this hollering died down in the corner, why Stidham, Laster and Noble and Kenton and Hoover and Vidauri and all came out.

Q. Now, where did they come out of? A. Came out of Death Row.

Q. Inside of the cage or outside of the cage? A. From where I was standing, I couldn't see no further

than this door, but they came out of inside of the cage. Now, while they was back there, Hoover I mean DeLapp did go in and out of there. He was knocking out lights and whatnot and tried to knock them all out, but he didn't knock out the lights in the cells, but he knocked the lights out here that extend out where he could reach them and knock them out, and the last light, the last light he knocked out was right here in front when they left.

[352] Q. All right. A. When they came out of here, they came over to this wash basin and they proceeded, everybody washed their hands, some of them discarded their clothes, and—

MR. HENNELLY: Object to that for the reason that it is too vaugue, that section, some of them.

Q. What part of the clothes did they discard?

THE COURT: The objection as to some of them, may be sustained. He may testify who they were, if he can.

A. Well, Noble and Stidham taken off their undershirts and discarded them here, and the entire bunch washed their hands at this wash basin. Then they came on out and came out at this door and came up these steps and done as they had been, some went up one side and some went up the other. They didn't stay very long after that.

Q. Mr. Trout, you say this started between six and six-thirty? A. Yes, sir.

Q. When is the next time you looked at your watch or did you have a watch? A. Nine-fifteen is the only time that I did look at my watch.

Q. And what time was that in relation to these occurrences? A. These occurrences, well, it was when they first taken the guard upstairs, when he had went upstairs.

Q. It was between, about nine or nine-fifteen? A. Yes, sir.

[353] Q. Now Trout, where were you standing when you could see these things?

MR. HENNELLY: Object to the form of that question if Your Honor please.

Q. All right. Tell this Jury where you were standing during the time that you just related? A. Well, up until the last time that they came out of Death Row, I could stand anywhere that I wanted to, but after they went back into Death Row, and met Kenton along about here, Kenton had a crowbar and so, I watched Kenton, followed him out of here and went back and took my stand here on these steps and this door here opens back to the wall on this side, and I stood down them steps and had all the lights turned out when the riot first started in this room, and this room, and I stood down them steps and had all the lights turned out when the riot first started in this room, and this room, and the basement. I stood down on this step and standing at this step you can see through the bars to this door that is as far as you can see.

Q. Where did Kenton go? A. Where did Kenton go?

Q. Yes. A. He came out here and milled around here a while, and after I went out here and took my stand out there, after a while he went back into Death Row.

Q. Herman, did you hear anything unusual during the time that these seven were back in Death Row? A. Yes, I heard a man screaming and hollering.

[354] Q. What did he say, if you can remember?

MR. HENNELLY: Object for the reason that that would be too vague, indefinite and speculative, and the time and the person is not fixed. It gives the witness a roving commission.

THE COURT: This was at the time they went, you have testified, let me ask you this, you have testified that this group of seven, I think that you have named them,

went back down to Death Row and they had, you testified that they had weapons. Now, and you have also testified that they came out and that you saw them wash. Now, did this that you have heard, or that you were asked about that you heard, the statement that someone made, did that occur between that period or before that period or after that period? A. That occurred while they was in Death Row, yes, while they was back there.

THE COURT: The objection will be overruled and the witness may answer.

A. Well, I heard the boy holler, he said, "I am not a snitch and I have never done nothing to you," and then he hollered, "Oh, Oh", and he made another holler.

Q. Now, how did he holler that? A. He hollered so loud I could hear him plum up here. Now, two or three times I walked out of these steps while they was back in there and I could hear him very plainly hollering. It was a scream, it wasn't a holler, it was a scream, shrilling voice.

[355] Q. You don't know who was doing the hollering, do you? A. I don't know who done it.

Q. Now Trout, I will ask you, did you at anytime that evening, did you leave B basement? A. Did I leave B basement?

Q. Yes. A. After I once come back there?

Q. Yes. A. I went up to my cell one time.

Q. Where was your cell? A. B Hall, and—

Q. Mr. Trout, did you hear any shooting in B basement that night? A. Not in B basement, no, sir.

Q. I believe that is all Your Honor.

Cross-Examination by Mr. Hennelly

Q. Mr. Trout, where are you presently celling? A. Where am I?

Q. Yes. A. Cole County Jail.

Q. You are in the County Jail, you are not in the Penitentiary, is that right? A. Yes, sir.

Q. You are there at your request for your own protection? A. No, sir.

Q. Did you request to go there? A. [356] A. No, sir.

Q. And of course you haven't been offered anything at all for your testimony, have you? A. That is right, I haven't.

Q. And has there been any discussion at all about cutting down your time, or any parole or anything? A. No, sir.

Q. Never was mentioned in the course of all of your discussions, is that right? A. Never has.

Q. Never has? A. No.

Q. And let me ask you this, when was the first time after the night of September 22nd that you first told the authorities anything about this situation? A. Well, now, who do you call the authorities?

Q. Well, anybody with the State? A. State Patrol authorities or officials of the prison?

Q. Yes. A. I told the State Highway Patrol.

Q. Well now, the State Highway Patrol— A. I told them about two weeks.

Q. About two weeks later? A. Yes, sir. That is purely a guess. I don't know exactly the date it was.

Q. Could it have been longer than that? A. It possibly could and it could have been shorter. I don't know.

[357] Q. Now then Mr. Trout, what job did you have in the Penitentiary. A. Plumber.

Q. Plumber. A. Yes, sir.

Q. And I believe—will you indicate on State's Exhibit 1 which is that chart in back of you, where your place is, your toolroom? A. Right here, part of my tools are in here, and part of them are in there.

Q. Now then, on the night of September 22nd, were you in your tool room at about six-thirty? A. I came back there at approximately between six and six-thirty.

Q. Did you stay in your tool room for a while? A. Stayed long enough to get the tools and get them downstairs.

Q. Where did you take them to? A. I taken them down to, under this room here, down in the back of the blower and pushed them out in the ventilator.

Q. Now had that been, was that also after there had been some commotion? A. Well, there was a yard full, the yard was full then, and they was working upstairs and was getting the doors to the locks to the cell and door open to the cell houses, opened at that time.

Q. Now, besides doing that with your tools, did you do anything [358] else? A. Yes, sir.

Q. What did you do? A. Well, you have got a boiler down there that makes your hot and cold water. So I turned off the main valve going to the boiler then, I cut off the main valve to block the steam from coming in there.

Q. So did you turn off the water and steam from Death Row? A. As far as that valve goes, yes, sir.

Q. Sir? A. Now, I can't turn off the water for B Hall and C Hall, after you get down here. Now, the plug for the water, the valve for the water that controls the complete hall is out in front of the steps in the ground. You have to have a key to do that.

Q. Well, did you turn off both the hot and the cold water for B basement? A. No, sir, just the water that leads to the boiler, the hot and cold that leads to the boiler.

Q. Sir? A. Just the hot and cold that leads to the boiler.

Q. Page 87 Mr. Riley. I am going to ask you if you recall certain questions being asked you and certain an-

swers being given by you in the Laster trial, the first trial in Jefferson City. A. Yes, sir.

[359] Q. I will ask you if these questions were asked, and these answers given, "Q. What do you mean turn off the water? A. Anything like that, we turn off the water and attempt to keep it from hurting anybody or keep it from being used to advantage anybody. Q. That is the water inside the hall? A. Yes, sir. Q. Or in the boiler room? A. Over our boiler room, the heating system." I am going to ask you if those questions were asked you and those answers given? A. Yes, sir.

Q. Now, has anybody discussed that section of your testimony with you since the Laster trial? A. No, sir.

Q. Nobody talked to you about that? A. No, sir.

Q. Since then, is that right? A. No, sir.

Q. All right. A. Now then, tell me, now you say no one discussed it with me, now the same thing has been practically asked over and over in every trial, but I thought you meant when I had been discussing it, had anyone tried to tell me what I turned off and what I didn't turn off.

Q. What I mean is, did anybody with the Prosecuting Attorney's office, or with the State Highway Patrol, go over that section of the testimony with you? A. No, they don't need to.

[360] Q. Now then, I will ask you this, where did you go in order to turn off that water? A. All right, you go down the steps here and you go down and turn back and come back like this. Now, this valve is right here, would be about here, comes down to a wash basin that we had down there to wash clothes in, or the plumber's bath.

THE COURT: Is that on a floor below that plat you are pointing to?

A. Yes, sir.

THE COURT: It is not in where the cells are, it is a floor below, a basement? A. Yes, sir.

THE COURT: But you are pointing to a place in the basement? A. You have to go through this door to go down there.

THE COURT: All right, go ahead.

Q. Now, when you go there and turn that water off, you can turn that water off at the floor, right there? A. Yes, sir.

Q. All right. A. Now wait a minute.

Q. I am sorry, go ahead. A. You can't turn off the water there for your main valve leading to your boiler room. Now you can climb up on what you would call a makeshift bench we have there and turn it off there, and we do move that around in working on this, fool [361] around to turn off any valves that is off the ground. Also the steam comes from this direction, I beg you pardon, comes from this direction, and comes over here and back, and if you want to turn this off, you have got to move that back around there.

Q. All right. A. To turn it off on that side.

Q. Now, what time was it when you got back to B basement after having turned off that water? A. After I got back to B basement?

Q. Yes. A. You mean after I got back up here?

Q. Yes. A. Didn't take very long.

Q. Well, what time, do you have any idea what time it was? A. Well, no I don't have no idea, just to the exact minute of what time it was.

Q. I don't ask you that Mr. Trout, would you say it was seven o'clock when you got back up there? A. No, I wouldn't.

Q. Would you say it was a quarter to seven? A. No, I wouldn't. I wouldn't say it was later than six-thirty.

Q. Six-thirty? A. Yes, sir.

Q. Now then—

THE COURT: Were you wanting to say something else?

A. Yes, sir.

[362] THE COURT: All right, go ahead.

A. It didn't take long to take these tools down there and hide them and turn off that water. Gonzalles was my plumber's helper, I mean I was his helper, and we just done what entered our minds at the time.

Q. I am going to object to that answer and ask that it be stricken.

THE COURT: The part about doing what entered their minds at the time may be stricken.

Q. Now, I am going to ask you, after you got upstairs then, where did you go after you had turned off that water? Indicate on State's Exhibit 1 just where you stood or what you did. A. Well, I stood anywhere I wanted to around here, but most of the time I watched this door, and Gonzalles watched this door.

Q. Now, do you have any connection with any leather work up there in the Penitentiary? A. Yes, sir, that is a privilege of anyone, any prisoner can have.

Q. Now, do you have some, did you have some leather equipment or some leather material which was stored somewhere? A. Yes, sir.

Q. And where was that stored? A. Well, part of it was down in this basement here and part of it was in this room here, before you get down to the basement.

[363] Q. Now, did you make any attempt to guard that material when those prisoners got in there? A. Yes, sir.

Q. Now, where would you have to go to guard it? A. I stood in front of this door and Gonzalles stood at this door.

Q. Now then, how long were you standing there at those two positions before, excuse me, strike that, at the position you were standing before you left there? A. Well, I don't know, because Gonzalles had more trouble on this door than I did over here, although my door did get knocked open one time, but I went over here to his defense two or three times, and we was always able to persuade the people that we couldn't give out the tools to them, and we didn't have no tools.

Q. All right. Now, what time was it, taking into consideration the time that you went down to turn off the water, what time was it to the best of your knowledge, that there was first a breakthrough into B basement, into the lobby proper? A. Into the lobby?

Q. Yes. A. Now, you call this the lobby?

Q. No, sir, I call this the lobby. A. This the lobby?

Q. That is right. A. You want to know when this door was opened?

[364] Q. No, I am asking you when is the first time that anybody ever congregated down in here? A. Well, right after we come back with the tools, DeLapp appeared there, which would put it about twenty-five minutes to seven I suppose.

Q. And how many men came in at that time? A. DeLapp was the first man on the scene, and there was a man come down and brought some tools with him that I could not identify and never have identified him.

Q. How many were there, were there a hundred there at that time? A. No, just three down there.

Q. Three? A. For the first few minutes.

Q. Then after the first few minutes, how many were there? A. Well now, in a period of five or ten minutes, I would say it filled up completely down there.

Q. Now, when you say it filled up completely— A. I mean this corridor right here. Now, this door was open

here, leading back into the hall like this, and they kept going back in there.

Q. Now, all right. Now, excuse me, while this section filled up completely, where were you, were you still standing over near the plumber's room door? A. Right here.

Q. And in front of what has been marked on State's Exhibit 1 as a fan room? [365] A. Yes, sir.

Q. You stayed there, did you? A. Yes, sir, when I wanted to, and when I didn't want to, I went anywhere I wanted out there from here.

Q. Did you stay there? A. No, not all the time. I just went anywhere I wanted to.

Q. Now, where did you go if you didn't stand there? A. Anywhere within this corridor and I went in here, and I asked the boys not to tear out this basin and not to tear out the light fixtures, and brought them out of there, and this place here was on fire here, and I asked them to put that fire out.

Q. All right. Now then, how long was it before anybody broke into the first door, which has been indicated here to be right in front of the main gate to B basement and Death Row gate No. 1? A. You want to know when the door was opened?

Q. Yes. A. Well, the Defendant had done come out of B basement or Death Row before I looked at my watch and that would be nine-fifteen.

Q. Then this door had to be opened before nine-fifteen, didn't it? A. Yes.

Q. Did you see them break it open? A. Yes.

[366] Q. Now, how long were they standing there working on it in point of minutes, was it a half hour or forty-five minutes before they broke open that door? A. Well, I don't know, because I didn't know I was going to be asked that.

Q. Do you have any idea how long it took them sir? A. How long it took them to open the door?

Q. Yes. A. Why anything I would say would be purely a guess on that part.

Q. Give us your best estimate that you can. A. Well, I would say at the time that this door was opened here, it was about fifteen to nine. That would be purely a guess.

Q. About fifteen minutes to nine when the first door was opened? A. Yes, sir.

Q. Now, during that time, did you see Captain Dietzel? A. Yes, sir.

Q. Where was Dietzel? A. You mean until this door was opened did I see him?

Q. Yes. A. The first hour prior to the time the door was opened, Dietzel would come up here and talk to them now and then, and stood within seeing distance most all the time.

Q. Now, your testimony is that they broke the first door open [367] by force, is that right? A. That is right.

Q. Did they break the second door open by force? A. Yes, sir.

Q. And the third door was by force? A. Yes, sir.

Q. And where were you standing when all that was done? A. Anywhere I wanted to in this corridor.

Q. But they did break it open by force, there wasn't any keys used in doing that, because you saw it, isn't that right? A. Yes, sir. The only door that didn't give them a lot of trouble was the third door leading to Death Row.

Q. How much trouble did they have with that? A. How much trouble they had on that, I don't know, but it wasn't very much.

Q. All right. Now then, after they broke in the first door which was about eight forty-five or quarter to nine,

can you tell the Court and Jury how long it took them to get into that second door? A. Not very long.

Q. Fifteen minutes or half an hour? A. Well, you can put it fifteen minutes, I think it would be close enough.

Q. And then how long did it take them to break into the third door? [368] A. Less than it did this.

Q. Well, would you say they got into the third door by ten minutes after nine? A. Yes, I would.

Q. All right. Now, they still had to break into a fourth spot, didn't they? A. Fourth spot?

Q. Did they have, is there another door, another lock that has to be opened before they can get down into Death Row? A. No, you have got to break this door and this door. Now, if you want in them cells you have got to break another lock to get in them cells, or unlock it. I don't know how— I didn't go back to here, and I don't know how they broke them locks.

Q. Where would that be, where would those cells be opened? A. Where would they be opened, where can they be opened from?

Q. Yes. A. You have got a lever here, but you have got a safety key and a master key, and you can put the lever on center and then you can work it with a key from any position you want in there, but if it is up or down, then you can't unlock it neither way.

Q. Now, do you, can you tell the Court and Jury where you were standing at the time they finally got down into Death Row? [369] A. When they got down to Death Row?

Q. Yes. A. I never did go into Death Row only one time I went down here to visit with an inmate named Ford.

Q. That is a colored fellow? A. Yes, sir.

Q. Let me ask you this, had you left the building now to go up to your own cell by nine-fifteen? A. By nine-fifteen?

Q. Yes. A. Just before nine-fifteen I told Gonzalles—

Q. You mustn't tell us what you told him, that would be hearsay. Did you leave the B basement prior to nine-fifteen to go to your cell? A. Yes, sir.

Q. And what time was that approximately, if you know? A. Well, it would be ten minutes after nine, because I came right back and sent him on to his cell to watch his cell because the men were at the cell.

Q. How far did you have to go to get to your cell? A. Well, I celled in 43-B and 43 is about here, and I would have to go up these steps here to 43 and came back down here.

Q. Now, when you say Cell 43, you of course are not indicating that it is on this same floor, are you? A. No.

Q. Where is it, is it in that building? A. On the next floor [370] up from this basement right here.

Q. And you say you left there at about ten minutes after nine, am I correct in that? A. Yes, sir.

Q. And you then went up to your cell, and what did you do up there? A. I told my cellmate that I was going to stay down in the basement the rest of the night, and was going to send Gonzalles to his cell, and I asked him to take my cell.

Q. All right. Now, as you left to go upstairs, do you recall, was there still a large group of men congregating into the lobby? A. There was very few men in the lobby.

Q. Were there men running up and down those, within the cage when you left to go upstairs? A. There was men all over them rails, standing more so on the walk than they was upstairs.

Q. Now, can you give the Court and Jury any idea the amount of time it took you to leave B basement and go upstairs and do whatever business you had to do, and come back down, was it ten minutes? A. No, I would say five minutes.

Q. Now prior to the time that you left to go upstairs, which was ten minutes, about ten after nine, had you seen Stidham yet then? [371]A. Had I seen Stidham yet then?

Q. Yes. A. Yes, sir.

Q. You had seen Stidham before that time? A. Yes, sir.

Q. Now, taking into consideration the fact that you went upstairs at ten minutes after nine, can you give the court and Jury any idea of the time it was after they broke in that third door, that you first saw Stidham? A. How much time it was?

Q. Yes. A. I would say from this door to this door, and time he come out, must have been thirty or forty minutes.

Q. I didn't ask you about that second door, I am asking you about the third door, you recall when they went in there, don't you? A. Yes, sir.

Q. All right now, how much time later did you see Stidham? A. It would be merely a guess.

Q. Give us the best estimate that you can. A. I would say thirty minutes.

Q. Thirty minutes? A. Yes, sir.

Q. Now then, which would fix it at about what time sir? Taking into consideration the fact that you left there at ten minutes after nine? A. Ten-forty.

[372] Q. I am sorry, what time? A. Be nine-forty.

Q. Nine-forty? A. Yes, sir.

Q. Is that the first time you saw Stidham? I may have misled him Your Honor, and I don't mean to.

THE COURT: Well, the witness of course has testified repeatedly that he is only giving estimates as to time. Now with that in mind, and the questions, you may proceed then with your questioning, since there is no objection.

Q. Tell us again, was it before you went upstairs that you saw Stidham the first time? A. Well, no, I saw Stidham before I went upstairs.

Q. Before you went upstairs? A. Yes, sir.

Q. Now, how much time before you went upstairs, did you see Stidham? A. I don't know.

Q. You don't know? A. No.

Q. All right. Now, when you saw him, where was he? A. Right there. He came out of Death Row cage right there.

Q. And where were you standing at that time? A. Right here.

Q. Still guarding the leather you got there? A. No, I was there. There was a boy shot and he had come up there and asked me to do something for him, anything I [373] could do for him, and I told him to stand here by this door, and when I got a chance, I would get him down these steps, as I had all the lights turned out and he was shot, and I later taken him and two more guys down in the basement and kept them down there all the rest of the night.

Q. Now tell me, when did you take that man that was shot down in the basement, did you take him down about the same time you saw Stidham? A. Well, I am not going to try to tell you what time, because I don't know what time it was, but it was the time that DeLapp come up and run all of them out. I told him, I said now is your chance to get down here, go in here and go slowly down the stairs and when you get at the bottom of the stairs stop, and I will come and get you and take you back to the boiler room.

Q. Now, so you left B basement at that time yourself, didn't you? A. Yes, sir.

Q. And you took this man—where was he shot sir? A. In the hip.

Q. Shot in the hip, and you assisted him where? A. Back to the boiler room.

Q. And how long did that take you? A. I don't know.

Q. Would you say that took you as long as ten minutes? [374] A. I imagine it would.

Q. Would you say it might have taken you as long as twenty minutes? A. No, I didn't spend much time down there.

Q. Now, that was the man you— A. Not the first time. I didn't spend much time down there.

Q. You were gone ten minutes with him, and what about these other two men that you took, how much time did you spend taking them out of the basement? A. I taken them all at once.

Q. You took all three of them at once? A. Yes, sir.

Q. Now, if you can recall when you came back up from the basement, did you see Stidham then? A. When I first came back up?

Q. When you came back after taking those three men down in the boiler room? A. No, I didn't see him then.

Q. All right now, were there any other men in that lobby on the outside of Gate 1? A. Yes, sir.

Q. Were there quite a few out there? A. No.

Q. How many were there, if you can remember? A. There was a few stragglers out here yet, but most of them [375] were coming out of here trying to find their way back to their own cells. They were coming out of C basement. Now, I was clear out here.

Q. Now, when you testified about Trout, something about slapping people on the back, and that Stidham slapping some people on the back, and there was a conversation there? A. Yes, sir.

Q. Was that before or after you took those three men down into the boiler room? A. That was before?

Q. Before? A. Yes, sir.

Q. And did you then immediately leave to go down into the boiler room? A. No, sir.

Q. How much time did you stay up there after that conversation and that back slapping that you saw before you went down in the boiler room? A. I don't know, but after the time he brought this bunch in, it give me a chance to put these guys in here without anybody seeing them, and I asked them to step down there while they was marching out.

Q. All right. But when you left, can you tell the Court and Jury where Stidham was when you left to go down in the boiler room? A. No, I can't.

Q. You didn't see him, did you? A. No, I didn't.

Q. And I believe you indicated that there was some talk about "I have taken you this far", or something like that, and now— A. Yes, sir.

Q. And was that at the same time they came out at first? A. Right here, that happened right here at the steps.

Q. Now, did you see Stidham leave at anytime, leave the lobby of B basement and go back into Death Row? A. Go back into Death Row?

Q. Yes. A. Yes, sir.

Q. All right sir, now taking into consideration this time of ten minutes after nine, can you give us any idea when it was that he went back into Death Row?

MR. RILEY: If the Court please, I think counsel has gone into this time for a long time here, and he is now repeating it, and it is now repetition, and he has gone over it, and this witness says he doesn't know how long it took, and he only has estimated it.

THE COURT: Well, the question of course, and the way it is asked, assumes a fixed time, and there has been no fixed time, except nine-fifteen, that I know of.

Q. I withdraw the question and I will try to fix a time based upon the time—that question is withdrawn Your Honor.

[377] Q. Taking into consideration the time that you left to go down into the boiler room, had Stidham gone back to Death Row yet at that time? A. Stidham went back into Death Row right after he came out.

Q. All right now, tell us what he did? A. He came over here and then he walked over into here somewhere, and back out through here and back into Death Row.

Q. Was that when you left to go down into the basement? A. No, sir.

Q. Did you remain the lobby? A. Yes, sir.

Q. You hadn't been in the basement yet? A. Yes, sir, I had been down there and put the tools down there.

Q. Had you been down there to take those three men down there yet? A. No. Now while they was back there, this boy came up and run everybody out of there, and when he run them out of there, that give me a chance to put them down in there.

Q. Now then, you were gone then for ten minutes with those three men?

MR. RILEY: He assumes he was gone for ten minutes, with these three men.

Q. His best estimate.

[378] THE COURT: All right, he may answer that question. However, I believe the testimony was that it took at least ten minutes.

Q. At least ten minutes, yes Your Honor. It wasn't at that time then that you heard this hollering by anybody back there, was it? A. No, sir.

Q. All right. Now when you came back up, was Stidham out in the lobby yet then? A. No, sir.

Q. Let me ask you this, did you at anytime see any men with any masks on, in that lobby? A. Yes, sir.

Q. Now, tell us when it was that you saw some men with some masks on? A. Right after this door was opened, there was Noble and Hoover and Kenton and Vidauri, they went down there, and there is a door right here leading down in, you can see these steps into what you call a bathroom. Now, they went this way and came back with masks on.

Q. Now, when you say masks— A. I am saying rag masks.

Q. Something to cover up their faces? A. Some of of them covered up from here like this, and left the mouth open and some left their eyes and mouth open and some left their hair open and some had their hair covered up.

[379] Q. Now, can you tell His Honor, and this Jury which ones of the men you saw put those masks on?

MR. RILEY: If the Court please, he hasn't said he saw anybody put them on.

Q. Withdraw the question. Can you tell us which ones of the men you saw with the masks on? A. Yes, sir.

Q. All right. Who were they? A. You just want the Defendants' names which have—

Q. Whichever men you saw sir. A. Vidauri, Noble, and Blake and Hoover and Kenton, and a boy by the name of Miller, and there was three or four boys that I know besides, but I don't know their names and they had masks on too.

Q. Would you say then that there were ten men down there with masks on? A. Well, between seven and ten.

Q. And after they—how long did they keep the masks on? A. Until this door was opened—

Q. Which door are you pointing to now? A. The second door.

Q. The second door? A. Yes, sir.

Q. That is when the guard was taken charge of? A. (No answer)

Q. Did they have the masks on when they went down into Death [380] Row? A. Well, I think that most of them discarded them after the guard had been taken.

Q. Did you see any of them with masks on when they went down into Death Row? A. No, I didn't.

Q. Did you see any of those men discard the masks? A. No, I didn't, I don't think I seen a single man discard his mask. I did see Kenton holding a mask like a handkerchief over his face, and telling Dietzel to keep his eyes to the floor.

Q. Now, do you know two fellows by the name of Linder and Thompson? A. Yes, sir.

Q. Did you see Linder and Thompson down there? A. Now which Thompson are you referring to?

Q. Either one of the Thompsons? How many Thompsons do you know? A. Well, I know four in the Penitentiary.

Q. Which four do you know? A. Well now, you don't know people by their given names in the Penitentiary.

Q. Do you know the Thompson that came to the Penitentiary when Linder came to the Penitentiary? A. Is that Frank Thompson's brother you are trying to drag out?

[381] Q. Yes. A. Yes, sir, that is Grant.

Q. That is Grant Thompson, isn't it? A. Yes, sir.

Q. Grant Thompson? A. Yes, sir.

Q. Now, did you see Grant Thompson down there that night? A. No, sir.

Q. Did you see any Thompson that you knew of down there that night? A. Yes, sir.

Q. And which one did you see down there? A. I seen a boy that I knowed as, some of them called him, referred to him as "Oklahoma". I don't know his given name. He was in B and C Hall that night, and also down there.

Q. And do you know a boy by the name of Linder? A. Yes, sir.

Q. Did you see Linder down there that night? A. Now, I say I know Linder. I know Linder by name. I don't know Linder to walk up to him and speak to him or hold no conversation with him.

Q. Do you know Linder if you see him? A. Well, I have been in close conversation with him, but I wouldn't say I would.

Q. Let me ask you, to the best of your knowledge, did you see Linder in that basement that night? [382] A. No, sir.

Q. Now then, after the first time that you saw Stidham come out, can you give the Court and Jury any idea of the length of time that he spent in the lobby before he went back into Death Row, in point of minutes, if you know sir? A. Well, as I said, he done a little talking here, and done a little over here, and then went right back in there.

Q. Now, you know how long he stayed back there on that occasion? A. It wasn't very long, but when he did come back, they brought the guard out and taken him upstairs.

Q. That was Mr. Dietzel, is that right? A. Yes, sir.

Q. And can you indicate on State's Exhibit 1, that chart, where they took the guard to, sir? A. No, sir.

Q. Did they march him through there? A. No, sir.

Q. Where did they take him to? A. They took him out of there sir. I went back there and saw the guard and talked to him in a cell. I am not sure, but I think it was in the fourth cell, but he was in a cell by himself. I wouldn't try to pick no certain cell. I talked to him here and they brought him out this way, and brought him up these steps and on up to B Hall.

[383] Q. All right. Now Stidham was there at that time? A. Yes, sir.

Q. All right. Now, did you see them when they came back down? A. Did I see them when they came back down?

Q. After taking the guard out? A. I am standing on the second and third steps here, either one I want to stand on, two or three, and you can't see anything if this room is dark. Now, I could see them when they turned there back here to go in here, and I could also see them when they went in this door here, very plainly, and the purpose was, everyone went in this door.

Q. All right. Now, did they go right back into Death Row after they came back down from taking Dietzel out? A. Yes, they was gone a little bit before they came back, but they all did come back.

Q. But when they came back down after taking Dietzel out, did they then immediately go back into Death Row? A. Yes, sir.

Q. They went immediately back in? A. Yes, sir.

Q. And who were the ones that went back there at that time? A. Stidham, Laster, Hoover, Kenton and Vidauri.

Q. Now, and Noble? A. And Noble.

Q. Was that the second time that you saw Stidham go back into [384] Death Row? A. Yes, sir.

Q. Was that the last time you saw him go back into Death Row? A. No, sir.

Q. All right now. On that occasion, the second occasion that you saw him go back there, had you yet taken those three men downstairs to the boiler room? A. Yes, sir.

Q. You had been down and back already had you sir? A. Yes, sir.

Q. All right. And after they went back, did you still keep your position sir, over here near— A. On the steps?

Q. Yes. A. Yes, sir.

Q. And were—and you were over in the dark, is that right? A. I was down in the dark, yes, where they couldn't see me.

Q. You were down in the dark where nobody could see you? A. Yes, sir.

Q. Now then, can you give the Court and Jury any idea of the length of time that they were gone on that occasion? A. Well, it would be purely a guess, but I would guess thirty, between twenty-five and thirty minutes. I don't know how long it was.

Q. And how long were they back there before—was it on this [385] occasion sir, that you heard this man hollering? A. Yes, sir.

Q. All right. A. Now they did come out again and came up here to get some tools, and before the hollering taken place.

Q. All right. When you saw them come back down sir, after having been up with Dietzel, and you were hiding here in the dark, is it your testimony that they went back into Death Row and then came out and got some tools? A. Yes, sir, they went back in there and got some tools and went back in there.

Q. Now, how long were they back there before they came back and got those tools? A. They wasn't back there very long.

Q. A few minutes sir? A. I would say five or ten minutes. I don't know how long it was.

Q. Were you still at the same position over there hiding in the dark? A. Yes, sir.

Q. And was there anybody else in the lobby? A. No, sir.

Q. And with the lighting, can you give the Court and Jury any idea with respect to where the lights might have been, either in Death Row or in the lobby proper? A. Yes, sir. This lighting system from here over was completely [386] knocked out, knocked out by sticks and not torn off. This lighting system on the outside here by that time had practically all been turned out. DeLapp turned out this light last in Death Row, before they finally washed their hands and somebody taken a stick and knocked this light out here, as they went out.

Q. All right. Now then, after they went back into Death Row, after—excuse me. After Stidham went back into Death Row the second time, and then you say he came out and got some tools— A. I didn't say Stidham came out and got some tools.

Q. I am sorry, did he come out and get some tools? A. No, he came out where two boys were getting some tools.

Q. Now, did he get any tools? A. No.

Q. And who were the boys that got the tools? A. Hoover and Noble.

Q. Hoover and Noble? A. Yes, sir.

Q. Did any of those men have masks on then? A. No, sir.

Q. And at the time that they got the tools, did you see any implement or weapon of any kind in Stidham's hand? A. No, sir.

Q. Now, now then, you saw, did the three of them leave together to go back into Death Row? [387] A. Yes, sir. I seen not only them three, I saw practically all of them come out at the time, but they didn't come out together.

Q. Now then, when they went back on this occasion, which is the third time, was that the time that you heard this man hollering sir? A. Yes, sir.

Q. All right. Now, how long were they back there before you heard the man hollering and in the method that you have indicated to this Court and Jury? A. Didn't seem like they only had enough time to get back.

Q. Just about enough time to get back there? A. Yes, sir.

Q. Did you hear anybody else hollering besides that man? A. Well, at that time, no.

Q. Did you hear Creighton hollering? A. No. There was some hollering before that, and there was some hollering after that.

Q. All right. Now, was there anybody else in the lobby at that time when those men went back for the third time? A. There was a couple of guys there that I couldn't identify that was back in Death Row with these boys.

Q. A couple of people that you don't know? A. That is right.

Q. You say you couldn't identify them, were they men you had [388] never seen before, or people that you didn't see well enough that you could give the Court any identification of? A. I couldn't give any identification of them.

Q. Now, did you still keep your position, hidden over in the dark sir, in that place that you had been? A. I came out of there occasionally whenever everything was quiet and there was no one around.

Q. Well, did you come out before the men came out of Death Row for the third time? A. No, I don't think I did.

Q. Not at the time you say those men came out and went into that place to wash their hands, were you still hidden over in the dark? A. Yes, sir.

Q. And tell the Court and Jury what happened there sir? A. What happened when they came out?

Q. Yes. A. Of Death Row?

Q. Yes. A. I am standing down on these steps here, and I saw the men come out of Death Row over to the wash basin and wash their hands. This corridor over here, they came out of here and proceeded to go back to B Hall.

Q. They left? A. Yes, sir.

Q. And you, all during that time, you were hidden back in the dark, were you, where nobody could see you? [389] A. That is right. I was on the second or third step leading down to the basement.

Q. Is it your testimony that you don't know who murdered Donnell, sir? A. Yes, sir.

Q. You were not a witness to it? A. No, sir.

Q. You are not a witness to it, are you? A. No, sir.

Q. After those men left, did you see them come back in or come back down anytime after that third visit? A. No, sir.

Q. Did you see any men go back with a flashlight or anything after Stidham and the other group had left to go up to B Hall? A. Now, when DeLapp proceeded to knock this light out and this light here was the last light in the hall, it was pitch dark out there. Now, I did hear a man scooting along, walking in the water, and the water was probably that deep. I seen him walking along there, I could see a shadow, and I believe it was an officer. I taken it for an officer, but I don't know.

Q. Now then Mr. Trout, when was the first time you were convicted of a crime? A. 1928.

[390] Q. And you were convicted at that time of rape in Jefferson City, is that right?

MR. RILEY: If the Court please—

A. No.

MR. HENNELLY: If Your Honor please, I am going to withdraw that, for the reason that I was mistaken, he

wasn't convicted in Jefferson City, he went to the Penitentiary at Jefferson City, I withdraw that.

THE COURT: The witness has testified as to his conviction. Now to go over that would be repetition. Now, if there are other convictions about which he hasn't testified, then counsel will be permitted to ask him about those, but as to the nature of them, etc., I don't see that that is material in this case.

MR. HENNELLY: Practically all cross-examination is repetition Your Honor.

THE COURT: (Out of the hearing of the Jury) The rule on the proving of the conviction of a witness is for the purpose of affecting his credibility as a witness. He may be asked whether he has been convicted of certain offenses and at cetain times, etc., and convicted of a certain offense. Now if he denies that, you can prove that to impeach his credibility. If he doesn't deny it, why it is immaterial.

MR. HENNELLY: Do I understand that the Court is not going to permit me to cross-examine him with respect to his convictions?

MR. RILEY: I am going to object to it, because it is repetition, and if counsel wants to question him about any convictions other than the ones he has testified to—

THE COURT: The ones he has testified to, yes.

MR. HENNELLY: I make this statement, that I want to ask this witness the number of the times he has been convicted and for what crimes.

THE COURT: He has testified to that Mr. Hennelly.

MR. RILEY: We don't object to the question if he has reference to any convictions other than the ones he has testified to.

THE COURT: I don't guess it makes much difference, one way or another, if you want to take all that time. If you have something other than what he has testified

to, that might be pertinent. Go ahead in any event. I will permit you to ask him.

Q. Tell the Court and Jury the number of times you have been convicted and for what offenses. A. Rape, car theft and robbery and robbery and kidnapping.

Q. Were you convicted of an assault?

MR. RILEY: If the Court please, the witness has said what he has been convicted of.

THE COURT: Well, you haven't finished the question. You may ask the question, and don't answer until counsel has an opportunity to object.

Q. I will ask you if you were not previously sentenced to ten [392] years in Jefferson City, beginning on the 21st day of September, 1952, for kidnapping and assault and robbery? A. I don't know how the sentence reads.

MR. RILEY: If the Court please—go ahead.

Q. Did you at anytime while you were in the Missouri State Penitentiary, escape from the Penitentiary? A. 1943.

Q. 1943? A. Yes, sir.

Q. How long were you at liberty sir? A. Until January 4, 1944, I believe.

Q. January 4, 1944? A. Yes, sir.

Q. And I believe your testimony is Mr. Trout, that nobody has even talked to you about any parole or helping you in any way in this case, as a result of your testimony? A. That is right, sir.

Q. No further questions.

Redirect Examiantion by Mr. Riley

Q. Herman, who was the first one that you, first person in authority, either with the Patrol or the Penitentiary, that you told what you seen there that night? A. I told the Deputy Warden, the third day after the riot, Mr. Pory.

Q. Who is Mr. Pory? A. Deputy Warden.

[393] Q. And you told him the third day after the riot? A. Yes, sir.

Q. Now, these boys that were shot, where were they shot? A. They was shot out in the yard in between the halls.

Q. They came from the outside? A. Yes, sir.

Q. That is all.

Recross-Examination by Mr. Hennelly

Q. Do I understand correctly that three days after the riot you told the Deputy Warden about this matter, but that nobody from the State Highway Patrol questioned you until at least two weeks after that sir? A. Yes, sir.

Q. No further questions. That is all.

THE COURT: Now gentlemen of the Jury, we will take our noon recess. Remember the previous admonitions of the Court not to permit anyone to talk to you about this case, nor for you to talk to anybody about it, nor should you discuss it among yourselves, nor should you read or listen to any conversation concerning it. The Sheriff will be there and take you to your dinner, and return you to this Court Room. Don't become separated from each other. I believe perhaps you had better take them upstairs before you go down to the restaurant. Some of them may want to go to the rest room and clean up a little bit.

[394] The Court then recessed from twelve o'clock noon, until one o'clock P. M.

Thereafter to-wit: On the same day, the following order was entered of record:

Circuit Court Record, Butler County, Missouri (Book 62, page 428) Tuesday, July 19th, 1955, Regular July 1955 Term.

Now at this time, it being noon, trial in this cause is recessed for the Noon Recess.

Now, noon recess being over, comes again the parties by their respective counsel, and comes the jury herein impaneled and sworn to try this cause, and whereupon trial in this cause is resumed and progresses in the hearing of the evidence herein.

PERCY LITTLE,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. State your name please. A. Percy R. Little.

Q. And by whom are you employed? A. The Missouri State Highway Patrol.

Q. How long have you been with the Missouri State Highway [395] Patrol? A. Since 1932.

Q. And what is your rank? A. Sergeant.

Q. And where do you live? A. Cape Girardeau

Q. You are attached to what Troop? A. Troop E.

Q. That is in Poplar Bluff? A. Yes, sir.

Q. Are you acquainted with the Defendant, James William Stidham? A. Yes, sir.

Q. I will ask you if you had a conversation with James William Stidham on or about September 27th, 1954? A. Yes, sir, I did.

Q. Will you mark this Exhibit 16 and this Exhibit 16-1?

Reporter marked Exhibit 16, and 16-1, a confession.

Q. Sergeant Little, where were you when you had this conversation with Stidham? A. I was in the Missouri Penitentiary, an area known as the field house, or athletic building.

Q. Who was present, if you recall? A. There were four members of the St. Louis Police Department, another member of the Highway Patrol and myself.

[396] Q. What were their names? A. I am not sure I can remember the names, Trooper Caldwell of the Highway Patrol was the other Patrolman, and Lieutenant Eitzman of the St. Louis Police Department, and a Patrolman named Jenneman.

MR. HENNELLY: I have no objection if he wants to lead him on that question.

A. I can't remember the names of the other people.

Q. Were there two other Patrolmen, one by the name of Overbeck and one by the name of Billings? A. That is correct.

Q. Sergeant, I show you what has been marked as State's Exhibit No. 16 and 16-1. Can you tell the Court what that is? A. That is a written statement, written by this Defendant Stidham.

Q. Now, Sergeant, in whose handwriting is this statement? A. Written by Stidham himself.

Q. Prior to the time that he wrote that, did you have any oral conversation with him? A. Yes, sir.

Q. And were you in this field house all the time that Stidham was there? A. I think so, yes, sir, I think I was there all the time.

Q. And did anyone threaten Stidham? [397] A. No. sir.

Q. Did anyone promise him anything to make—write this statement? A. No, sir.

Q. Anyone use any violence of any kind? A. No, sir.

Q. Hit him? A. No, sir.

Q. You say he signed this then of his own free will? A. Yes, sir.

MR. HENNELLY: Object to that last statement, if Your Honor please, for the reason it is an invasion of the province of the Jury, and it is a conclusion. I think the question may be did he sign it.

THE COURT: Sustained at this time. He may tell what was done or how it was done, or the conditions surrounding the signing of it.

Q. Was Stidham handcuffed? A. Not while he was writing that statement.

Q. Was he handcuffed when he was brought in there? A. Yes, sir.

Q. Do you recall who brought him in? A. Well, I think I know, I think he was brought in by Caldwell and one of the members of the St. Louis Police, but I am not sure which one.

Q. Did you have any oral conversation with him about the [398] death of Walter Lee Donnell? A. Yes, sir.

Q. Will you state to the Court and Jury just what those conversations were.

MR. HENNELLY: At this point, if Your Honor please, the Defendant moves the Court to conduct a preliminary examination and asks the Court to inquire into the voluntariness of the statement, and to determine whether the statement was given voluntarily, either the oral or the written statement, and we ask that that hearing be conducted outside of the hearing of the Jury.

THE COURT: And the Defendant proposes to show by cross-examination, or by its own testimony the involuntariness of the statement?

MR. HENNELLY: Yes.

THE COURT: The request will be granted. Gentlemen, it will be necessary for some matters to be taken up outside of the hearing of the Jury relative to the admissibility of some evidence. It may take some little time. I wonder if maybe we couldn't move one of those benches in the hall, move one of those into the law library, and we will let you go back to the law library, not to read any of the books, but because it is a little bit cooler back there, and there are some windows, and the windows are open

and it will be a whole lot more comfortable for you in there than it would be in the Jury Room [399] upstairs. So you can go with the Sheriff, and remember about the instruction of the Court not to talk about the case and you can kill time the best you can until we bring you back in. The record can show further Mr. Ehlers, that the library room is one room located in the southeast corner of the Court House and is connected with the Court Room. In fact the door to it opens from the back of the Court Room, and the door that opens out into the hall is the door that is locked, and the Sheriff has been instructed to lock that door and it is just as private as the Jury Room could be, and it is a large room, probably twenty by forty, and it is a lot cooler in there. This is being done because of the convenience of the Jury. This is a very warm day and the Jury Room is located between the roof of the building and the floor of the Court Room which makes it sort of an in-between room, and it is a very hot room. The ceilings of it are only about seven feet high and it is very hot and there is no ventilation except small windows down on the floor.

MR. RILEY: I would like to ask the Court whether or not the Jury, in the law library can hear what is going on in the Court Room?

THE COURT: No, they couldn't hear in there at all. It is sixty-six feet from the front of the bench to the back where the door is that leads into the library, and these are tile walls, and plastered walls. Now, I would suggest that while [400] you have Sergeant Little on the witness stand, that you proceed with your interrogation of him relative to the voluntariness or otherwise of the statement that has been testified about, and he may be cross-examined and then such other witnesses as you have relative to this statement be brought upon the stand and testify as to the statement and the conditions under which it was taken, subject to cross-examination, and at the conclusion of that,

if the Defendant then has any testimony concerning the voluntariness of the confession, he may take the stand or offer such testimony as he wishes to offer, and then at that time the Court will pass upon the admissibility of the statement into evidence, and then the Jury will be recalled, and of course parties will have the same opportunity of presenting the same matter before the Jury. With that statement, you may proceed.

MR. RILEY: That is all I have for this witness at this time.

The following proceedings were had outside of the hearing of the Jury:

Cross-Examination by Mr. Hennelly

Q. Sergeant Little, can you tell His Honor, how far this building that you have referred to as the athletic building is from the Administration Building in the Penitentiary? A. I should think it is about, oh, maybe seven or eight hundred feet from the Administration Building.

[401] Q. Seven or eight hundred feet? A. Yes, sir.

Q. Had you interrogated this Defendant at anytime prior to the time that you took the statement which has already been marked as State's Exhibit 16? A. No, sir, I had never seen him before.

Q. You had not seen the Defendant at anytime prior to that? A. No.

Q. Now, what time was it that you first saw the Defendant in this building Sergeant? A. It was about, oh, between eleven and twelve o'clock, probably around eleven-thirty.

Q. In the morning? A. Of the 27th of September.

Q. Of the 27th of September? A. Yes, sir.

Q. At the time that the Defendant entered that room, you say he was accompanied by some officer? A. There were two officers who brought him down to that building.

Q. Two officers who brought him down to that building? A. Yes, sir.

Q. Now, do you know whether or not they were both members of the Metropolitan Police Department of St. Louis, or do you know who they were? A. As I recall, one was a member of the Highway Patrol, and [402] one was a member of the Police Department of St. Louis.

Q. Now, when the Defendant came down there, how was he dressed? A. As I recall it, he was in the ordinary prison uniform.

Q. And you say that he was handcuffed, was he handcuffed with the handcuffs in front of him or in back of him, if you recall? A. I don't believe I recall.

Q. All right. Was he placed in just the ordinary handcuffs which you use in the normal course of your business, or did he have one of those confining types of handcuffs which also had the leather belt section to it? A. As I recall it, he had on just ordinary handcuffs.

Q. Very well. Now, having come in there at that time, were you seated at the table, or standing or just where were you within the athletic shed? A. Most of the time I was in there, I was seated at a table. Now, I am not absolutely certain that I was seated at that table, or I am not absolutely certain that I was in that room when he was brought in there. I think however, that I was seated at the table, as I remember it.

Q. Now, was there, can you give His Honor any idea of any other furniture that was in that room Sergeant? A. Well, this athletic building, the main room of it is I believe sort of a dressing room is what it appeared to me to [403] be, for athletic events. It had a bunch of benches around the wall and it had one rather large table in there, something like the one in here.

Q. The one you are now indicating is the counsel table here in the Court Room? A. Yes, sir.

Q. Very well. And I believe that was about— A. There was a couple of anterooms to that however.

Q. Now, was the questioning all done in the room that you have referred to here for His Honor? A. The main room.

Q. That was the main room? A. Yes, sir.

Q. And can you tell His Honor what the dimensions were of that room? A. Roughly I would say they were probably twenty by thirty feet.

Q. Twenty by thirty feet? A. Yes, sir.

Q. And I will ask you, how long was the Defendant in there before—strike that. Who did the actual interrogation of the Defendant? A. I think most of the questions that were asked him were by Lieutenant Eitzman of the St. Louis Police Department.

Q. Were you present for the entire interrogation? [404] A. I believe so, yes, sir.

Q. Did you ask any of the questions? A. I think I did.

Q. Was there, did you have with you, any of the folders and files of the identification section of the Penitentiary of the Defendant at that time? A. No, I don't think so. I had a folder, but I don't think it had anything to do with him in particular.

Q. All right. Now, I will ask you, did you, did any of the other men besides Lieutenant Eitzman and yourself, conduct the interrogation? A. I believe that there may have been another question or two asked by some of the other men. I think Trooper Caldwell asked a couple of questions.

Q. Now, can you tell us Sergeant, was the Defendant standing or sitting during the time of this interrogation? A. I think he was standing part of the time and sitting part of the time, as I remember it.

Q. Well, while he was standing, did he still have the handcuffs on? A. I believe his handcuffs were on until

he was ready to start writing the statement, if I remember correctly.

Q. So that during the entire, oral examination, at least he was still handcuffed? A. I believe so, yes, sir.

[405] Q. Now, can you recall, did you begin the interrogation, or did Lieutenant Eitzman begin, if you recall? A. I think Lieutenant Eitzman did.

Q. And when the Lieutenant first began to question the Defendant, I am going to ask you if the Defendant didn't tell him that he didn't know anything about the murder of Walter Lee Donnell? A. I don't remember the Defendant saying anything for a while.

Q. You don't remember him saying anything for a while? A. No.

Q. Did he at anytime while he was in there on that day, deny that he had anything to do with the murder of Walter Lee Donnell? A. I believe he did. I am not too sure about that. I believe he did.

Q. You believe that he did? A. Yes, sir.

Q. Now then, taking into consideration his denial, if that actually happened Sergeant, how much time elapsed before there was some change in his statement, to the effect that he did have something to do with it? A. Oh, I think he had been in there half an hour or so before he indicated that he was willing to tell the truth about it.

Q. He was in there about half an hour before he indicated that [406] he was willing to tell the truth, is that right? A. Yes, sir.

Q. Now, I am going to ask you if during that half hour, did anybody lay a hand on him? A. Not as far as I know of.

Q. Were you there and did you see everything that was going on? A. I was there and I saw him, I saw everything that went on. I was in the room.

Q. You were right near and adjacent to the place where he was being interrogated weren't you? A. Yes, sir.

Q. And you didn't see anybody touch him, and you didn't see anybody strike him, is that right? A. That is right.

Q. I am going to ask you if there was a rope in that room that you saw? A. No, sir.

Q. You didn't see any rope? A. No, sir.

Q. I am going to ask you if it isn't a fact Sergeant, that the Defendant—that a rope was placed upon the handcuffs which were behind him, and that the Defendant was raised off of the ground and permitted to hang for sometime? A. No, sir.

[407] Q. That was not done? A. No, sir.

Q. Am I correct in your statement? A. Yes, sir.

Q. Now, after he had been there for this first half hour and then you indicated that he made an oral statement, what time would you say that he began to make that oral statement? A. Oh, I think somewhere around noon or a little after.

Q. And when did he finish the oral statement? A. It seems to me like it was about twelve-thirty.

Q. And was it, how much time after that did he begin the written statement? A. Well, I believe I misunderstood you there. I think that he completed his written statement about twelve-thirty, or started writing about twelve-thirty or somewhere around that time.

Q. Began the written statement around twelve-thirty? A. Maybe. I just can't remember for sure, but it seems to me like it was. I can't remember whether he began or completed his written statement about twelve-thirty. I think maybe he began it.

Q. Began it about twelve-thirty? A. Yes, sir.

Q. Now, did the Defendant complain of any injury to him while he was there? [408] A. No, sir.

Q. Did he pass out at anytime? A. No, sir.

Q. Didn't lose consciousness and wasn't necessary for any of the officers there to revive him, is that your testimony? A. That is right.

Q. And after he had, you know about what time he finished the statement? A. No, I am not positive about that. He either finished it about twelve-thirty or started it about twelve-thirty and I think maybe it took him about fifteen minutes to write the statement. It was around twelve-thirty one way or another.

Q. Do you know what they did with the Defendant after he left that room, of your own knowledge? A. I didn't go with him when he was moved out of there, but I saw him, I saw him later in O Hall, at the Penitentiary, but I don't know whether he was taken directly there or not from this room. I believe he was.

Q. Now O Hall, is that a place of some type of additional confinement?

MR. RILEY: Well, if the Court please, if this is at a time subsequent to the time that he wrote the statement, it wouldn't be material on this issue.

Q. I don't want to go too far afield Your Honor.

THE COURT: Well, you might inquire as to where he was taken.

[409] Q. I won't go too much further into this.

THE COURT: All right.

Q. Let me ask you this, do you know of your own knowledge whether or not he was returned back to his own cell after he had been first interrogated? A. By his own cell, do you mean in Death Row?

Q. Yes. A. He wasn't in Death Row the next time I saw him.

Q. And you saw him in O Hall? A. That is right.

Q. And you know of your own knowledge how long he remained in O Hall? A. He was there until he was dressed out to go to Springfield Prison, or whatever it is down there.

Q. Did you at anytime subsequent to the 22nd, interrogate or attempt to interrogate this Defendant?

MR. RILEY: What day?

Q. September 28th, 27th, I am sorry. A. No.

Q. I have no further questions of this witness.

MR. RILEY: That is all. Call Lieutenant Eitzman.

LIEUTENANT WALTER EITZMAN,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. State your name please. [410] A. Walter Eitzman.

Q. How old are you sir? A. Forty-seven.

Q. Where do you live? A. 5435 Christy Blvd., St. Louis.

Q. Who are you employed by? A. St. Louis Metropolitan Police Department.

Q. How long have you been with them? A. Little over twenty-five years.

Q. What rank do you hold? A. Lieutenant.

Q. I will ask you if you are acquainted with the Defendant, James William Stidham? A. Yes, sir, I am.

Q. I will ask you if on September 27th, 1954, you had a conversation with Stidham? A. I did.

Q. And where did this occur? A. In the field house of the Penitentiary.

Q. And Lieutenant, I show you what has been marked Exhibit No. 16 and 16-1, and ask you if you know, can tell what that is? A. This is a page and a part of another

page of a statement which was reduced to writing, made by James Stidham.

Q. Whose handwriting is it in? [411] A. James Stidham's.

Q. Is that the Defendant? A. That is right.

Q. Did he write that in your presence? A. Yes, he did.

Q. Did he sign it in your presence? A. He did.

Q. Were you in this room when Stidham was brought in? A. I was.

Q. And how was he brought in? A. Well, Trooper Caldwell and Patrolman Jenneman went to where he was confined, which I don't know, and brought him in in a State Patrol car.

Q. Was he handcuffed? A. Yes, sir. He had a pair of handcuffs on him in the back.

Q. You say his hands were in the back of him? A. Yes, sir.

Q. When did you remove the handcuffs?

MR. HENNELLY: Object. I am sorry, go ahead, that is okay, go ahead.

A. Just prior to him making a statement, writing a statement.

Q. Now, prior to the time he made the statement, did you or anyone in your presence, threaten that Defendant? A. I did not.

Q. Did you or anyone there in your presence promise him anything? [412] A. No, sir.

Q. Did you offer him anything to make that statement? A. Nothing whatsoever.

Q. Did you or anyone else hit him, beat him, strike him in any way? A. No.

Q. Did you or did anyone else there apply any physical force or violence to this defendant in order to get him to make that statement? A. Nothing.

Q. That is all.

Cross-Examination by Mr. Hennelly

Q. Was he held up Lieutenant, with his hand in back of him by a rope and suspended in mid-air, at least with his feet off of the ground for around twenty-five or thirty minutes in order to get that statement out of him? A. No, sir.

Q. Let me ask you this Lieutenant, when he first came in there did he, did he deny that he had anything to do with the murder of Walter Lee Donnell? A. Yes, sir.

Q. And for how long did he persist in that position? A. In denying it you mean?

Q. Yes. A. Oh, approximately half an hour.

[413] Q. Half an hour? A. Yes.

Q. Now, during that time, did you strike him? A. No, sir.

Q. Was he standing or sitting at that time? A. Sitting.

Q. And was he seated there in a chair? A. On a chair.

Q. And what position, what was the position of the other people in the room? A. I was seated about three or four feet away from him facing him.

Q. Were you doing all of the interrogation Lieutenant? A. I did most of it until he made, wrote the statement.

Q. And did anybody else conduct any interrogation? A. Very little, there may have been one or two questions asked, it is possible.

Q. Were all of the officers armed, did you all have pistols? A. That is right.

Q. Anybody have a stick? A. No.

Q. Did you see a rope in there at all? A. No rope.

Q. No rope? A. No.

Q. And for thirty minutes the Defendant denied that he had anything to do with it, and then— [414] A. I wouldn't say that he denied it for thirty minutes.

Q. Well, how long did he deny it Lieutenant? A. Well, just briefly before he made a statement.

Q. For how long would you say that was? A. Oh, maybe ten or fifteen minutes.

Q. Ten or fifteen minutes that he continued to deny it? A. Yes.

Q. Now then, he made an oral statement, did he? A. Yes, that is right.

Q. Now, is all of the information which he gave in the oral statement, was that incorporated into the written statement? A. No, not all of it.

Q. Not all of it? A. No.

Q. Well, what is absent from the oral statement that is in the written statement? A. You mean things that we talked about?

Q. Any admissions of any kind that he made? A. As far as the statement is concerned, it practically covers the facts of the occurrence of the crime.

Q. So that all of the admissions which were made in the oral statement are incorporated into the written statement, is that right? A. No, there are other things that were said, that could pertain to incidents that aren't included in there.

Q. Do you know what any of those are? [415] A. Yes, sir. I asked him questions even after the statement was made, how he felt about Creighton.

Q. And he said what? A. He said he is a lousy son-of-a-bitch, and he said I will kill him the first chance I get.

Q. And anything else? A. I don't recall anything else offhand.

Q. All right now, when he was writing up that statement, who gave him the fountain pen with which to write that, if you know? A. Sergeant Little.

Q. And did he just sit there and write it all in one straight movement and motion, or did anybody tell him what to put in that statement? A. Well, the first part of the statement included a few facts that we were interested in, which Sergeant Little had asked him pertaining to where he was located at the time of the riot, what his sentence was and what for, and the length of his sentence, and after we had the first preliminary part of the statement, then he wrote it out by himself.

Q. There is a statement or something in there about his age, did he tell you that his age was twenty-five? A. That is right.

Q. Nobody told him to put that down? A. His age was twenty-five and we included that in the first [416] part of the statement.

Q. Do you know how old the Defendant is, of your own knowledge? A. Not any different than what he has told me.

Q. I see. When he left there Lieutenant, do you know where the Defendant was taken to? A. I couldn't testify to that. I know where I told them to take him.

Q. Where did you tell them? A. O Hall.

Q. So that you told them to take him back to, take him to some position, or to someplace other than that from which he was first, had first come from, is that right? A. I couldn't testify yes or no to that, because I don't know where he came from.

Q. How did you arrive at O Hall then? A. Well, I had been in O Hall and seen the condition and I figured it was as safe for him or any of the other prisoners to keep him after making a statement.

Q. That it was safe to keep him there, is that right? A. That is right.

Q. Let me ask you Lieutenant, did he pass out at anytime during that interview, interrogation? A. No.

Q. And there was no—when he left he was in perfect, he was at least in the same physical shape that he was when he [417] when he came in to make the statement? A. That is right.

Q. Nobody hit him or anything? A. No.

Q. Nobody held him up in the air? A. No.

Q. Did he complain about even a paralysis of one of his hands from being held in the air? A. Not to me, no, I didn't hear him.

Q. Did you see either one of his hands even shriveling up? A. No, sir, I didn't.

Q. No further questions.

Redirect Examination by Mr. Riley

Q. Lieutenant, regarding the oral statement, did you have any oral conversation with Stidham regarding any motive that he might have had for killing Donnell? A. Yes, sir, I did.

Q. What was that? A. He stated that Donnell was a snitch, that he was no good, and that he had snitched on a couple of fellows from St. Louis who had received quite a bit of time as a result of it.

Q. That included in the written statement? A. No, that is not in there.

Q. Did you tell him what to put in that statement regarding the [418] facts of the killing of Donnell? A. Not what to put in. I told him what we desired as far as the facts were concerned, around the incident of the crime.

Q. But it was, the use of the words in the statement were his own and not yours? A. Exactly.

Q. That is all.

MR. HENNELLY: I have no further questions Your Honor.

THE COURT: Were you there during the entire questioning of the Defendant?

A. Yes, sir, I was.

Q. Of Stidham? A. Yes, sir.

Q. From the time he came in until he was returned? A. Yes, sir.

Q. That is all.

ELMER OVERBECK,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. State your name please. A. Elmer Overbeck.

Q. And where do you live Mr. Overbeck? A. St. Louis, Missouri.

Q. Are you a member of the St. Louis Metropolitan Police Department? A. Yes, sir.

[419] Q. What is your rank? A. Patrolman.

Q. How long have you been a Patrolman? A. Five and a half years.

Q. Are you acquainted with the Defendant Stidham? A. I am.

Q. I will ask you if on September 27th, 1954, inside of the Missouri State Penitentiary, you had a conversation with Stidham? A. Yes, sir.

Q. Did you, were you present when he had a conversation with others? A. I was present.

Q. I will show you what has been marked as State's Exhibit 16 and 16-1, and now what is that? A. I do.

Q. What is it? A. That is the handwritten statement by the Defendant Stidham, as to his participation in the riot, etc., in Jefferson City.

Q. Did he sign that in your presence? A. He did.

Q. Where were you? A. We were in the field house over at the ball diamond in the Missouri State Penitentiary.

Q. And who was there, if you recall? A. Well, myself, Lieutenant Eitzman of St. Louis Police Department, Patrolman Thomas Jenneman of the St. Louis Police [420] Patrolman Charles Billings of the St. Louis Police Department and Percy Little of the Troopers, Sergeant Percy Little, and Trooper Tony Caldwell of the Troopers.

Q. Were you there when the defendant came in? A. I was.

Q. Who brought him in? A. Trooper Caldwell and Patrolman Jenneman.

Q. And were you there all the time that Stidham was there? A. I was.

Q. And during, who was questioning Stidham? A. Lieutenant Eitzman.

Q. During the time Stidham was there did anybody, did you or anyone else promise him anything to make that statement? A. No, sir.

Q. Did you tell him it would be easier for him or anything else? A. No, sir.

Q. Did you hit him? A. No, sir.

Q. Did you beat him? A. No, sir.

Q. In any way? A. No.

Q. Did anybody, you or anyone else use any violence of any kind or nature to get Stidham to make that statement? A. No, sir.

[421] Q. You were there all the time? A. Yes, sir.

Q. Did you hang him up from the ceiling? A. No, sir.

Q. Did anyone else? A. No, sir.

Q. I believe that is all.

Cross-Examination by Mr. Hennelly

Q. Officer, do I understand correctly that when the Defendant first came in, he denied any participation in the murder? A. He denied any participation in the murder?

Q. Yes. A. On the first account.

Q. How long did he persist in that? A. We talked to him I imagine for about twenty-five minutes or thirty minutes, rightalong in there, and he continued to say that he had nothing to do with the murder of Donnell up to that time.

Q. All right. And then after that, he made an oral statement in which he admitted his complicity in it, is that right? An oral statement, in which he did say he had something to do with the murder? A. That is right.

Q. And nobody had hit him or nobody made any threats against him, any threatening gestures or nobody hung him up or anything, [422] is that right? A. Nothing.

Q. Nothing? A. No, sir.

Q. And I am going to ask you, did you go over and get him out of his cell before he was brought into the athletic field house?' A. I didn't.

Q. Did you, did he have a wrist watch on him when he was brought over there? A. I don't recall.

Q. Did you at anytime subsequent to that get the Defendant's wrist watch for him? A. No, sir.

Q. Go to a property room for it? A. On the day of the checkout I went and got a prisoner's wrist watch. I thought it was Laster's.

Q. Let me ask you this, was all of the information which the Defendant gave in the oral statement, was that incorporated in the written statement? A. Phrase that again.

Q. Was everything that was put into the oral statement, was that put into the written statement? A. That is right.

Q. So that there isn't anything that was said by the Defendant in the nature of an admission while he was being questioned [423] orally, which is not included in the written statement, is that right? A. Well, he stated quite a few things there, and I mean offhand I couldn't swear, there might be a few things that he could have left out. He told quite a bit orally.

Q. Do you, can you give us any of those statements now? A. Which statements?

Q. Any of the statements which were left out? A. Offhand I couldn't recall if any was left out.

Q. All right. Now then, I am going to ask you how long in all was the defendant in that room? A. In the field house?

Q. Yes. A. Oh, I imagine an hour or an hour and a half.

Q. An hour or hour and a half? A. Yes, around about.

Q. And did you take him out of there to O Hall? A. No, I never.

Q. You weren't one of the officers that did that? A. No, I never.

Q. And was it necessary at anytime to revive the Defendant? A. Revive him?

Q. Yes. A. No, sir.

Q. All right. Now then, I am going to ask you, did you assist, or did any of the officers in your presence, assist him [424] in writing this? A. No, sir.

Q. Do you recall that the Defendant was asked about his age? A. He stated his age.

Q. What, do you recall now how old he said he was? A. Twenty-five I believe.

Q. He said he was twenty-five? A. I believe.

Q. And here on the statement there is something scratched out and then begins the next time, was there any officer there who told him not to put that there, and to scratch that out? A. No, sir, that was done on his own accord.

Q. Done on his own accord? A. Yes, sir.

Q. How close was the nearest man to him at the time he was writing this out? A. Well, across the way, across the table, which probably would be two and a half feet wide, might be three feet.

Q. And during that time nobody was telling him what to put in here, is that right? A. No, sir.

Q. He went ahead and just started writing, and he wrote the whole thing himself? [425] A. His own.

Q. His own? A. Yes, sir.

Q. Did you notice anything the matter with the Defendant's hand? A. With his hands?

Q. Yes, did you see any paralysis of any of the fingers? A. I never noticed.

Q. You didn't notice anything wrong with them? A. No.

Q. Was he at anytime, was there a coat put on him at anytime, and did you have sit down with his legs handcuffed and his feet and hands handcuffed behind him? A. No.

Q. That wasn't done? A. No.

Q. And there was no rope in there? A. No.

Q. And he was just, he first went in there and denied it, and then he went ahead to tell you, and nobody had to do a thing, or promise him anything or hurt him or do anything else, is that right? A. No, sir.

Q. Thank you very much.

MR. RILEY: That is all. Call Trooper Caldwell.

[426] TROOPER R. C. CALDWELL,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. R. C. Caldwell.

Q. And where do you live Mr. Caldwell? A. Fredericktown, Missouri.

Q. How old are you sir? A. Forty-seven.

Q. Are you with the Missouri State Highway Patrol? A. Yes, sir.

Q. What is your rank? A. Trooper.

Q. How long have you been with the Patrol? A. Since the 14th day of December, 1942.

Q. I will ask you if you are acquainted with the Defendant, James William Stidham? A. Yes, sir.

Q. I will ask you if on September 27th, 1954, in the Missouri State Penitentiary, if you saw the Defendant? A. On what date?

Q. September 27th, 1954? A. Yes, sir.

Q. And where were you? A. At first I saw him in Death Row of the Penitentiary, and he was taken to the field house of the Penitentiary.

[427] Q. Who took him? A. Patrolman Jenneman of the St. Louis Police Department and myself.

Q. And were you present at the field house all the time that the Defendant was there? A. Yes, sir.

Q. And when he left, how did he leave? A. He was taken in the Patrol car by Patrolcar from the field house to the O Hall.

Q. Now, I will show you what has been marked as State's Exhibit 16, and 16-1, and ask you if that instrument bears your signature? A. The last page bears my signature, and the first page my initials.

Q. And I will ask you if you saw the Defendant, James William Stidham, sign that instrument? A. Yes, sir.

Q. Who wrote it out? A. He did.

Q. Did you see him write it? A. Yes, sir.

Q. Now, prior to the time, did you, who was present there at the field house? A. Sergeant Little, of the State Highway Patrol, Lieutenant Eitzman, Patrolman Overbeck, Patrolman Billings, Patrolman [428] Jenneman and myself.

Q. Did you hear the Defendant Stidham make any statement concerning the Death of Walter Lee Donnell? A. Yes, sir.

Q. Now, prior to the time that he made that statement and prior to the time that he wrote this one, did you or did anyone in your presence, promise Stidham anything? A. No, sir.

Q. Did you or did anyone in your presence hit Stidham? A. No, sir.

Q. Did you or anyone in your presence beat him with any kind of an instrument or your hands at all? A. No, we did not.

Q. Did you, or did anyone in your presence offer to Stidham any physical violence whatsoever? A. No, sir.

Q. Did you threaten him? A. No, sir.

Q. Did anyone in your presence threaten him? A. No, sir.

Q. That is all.

Cross-Examination by Mr. Hennelly

Q. Officer Caldwell, Trooper Caldwell, you are one of the gentlemen that took him from his cell, is that right? [429] A. Yes, sir.

Q. And who was with you at that time Trooper? A. Patrolman Jenneman.

Q. At that time was there any discussion with the defendant with respect to a wrist watch that he had on? A. Not that I remember of.

Q. I will ask you if you recall the officer telling him to leave the wrist watch there, and don't take the wrist watch with him? A. I didn't hear him tell him that.

Q. Now, was he manacled in his cell or just where were the handcuffs put on him? A. The handcuffs were put on him in Death Row before we left Death Row.

Q. And was he handcuffed to the back? A. Yes, sir.

Q. And was he, was there one of those leather belts on him? A. No, sir, there wasn't.

Q. Just the handcuffs? A. A pair of handcuffs.

Q. Now then, this place where he was questioned is quite some distance from Death Row, isn't it? A. Yes, it is several hundred feet.

Q. When you got in there, who was in that athletic shed at that time? [430] A. There was Patrolman Billings, Officer Beck, Sergeant Little, Lieutenant Eitzman, and—

Q. Did the Defendant at anytime during the questioning, request a lawyer? A. Not that I remember of, no.

Q. Did you hear him talking anything about getting a lawyer? A. No.

Q. Do you know whether or not he was confined after he was questioned and placed in O Hall, was he accessible to anyone, either members of his family or to any lawyer or anything after that? A. Not to my knowledge.

Q. He was not? A. No.

Q. All right. Now then, I am going to ask you, did the Defendant deny this matter at first? A. Yes, at first he did.

Q. And how long did he deny it? A. Oh, probably twenty-five or thirty minutes.

Q. And did anybody do anything at all to him, did anybody handcuff him and put the handcuffs in back of him and lift him off of the ground by a rope? A. No, sir.

Q. Until he decided to tell you what you wanted to know? A. He was handcuffed, but not lifted off the ground by rope.

Q. That wasn't done, was it? [431] A. No.

Q. Now, you know how long the oral questioning took place? A. Before he made any admissions orally, I would say twenty-five to thirty minutes he was questioned.

Q. I see. And I am going to ask you, when he was, was he ever—strike that. Was there ever a coat put around him during this questioning? A. No, it was warm weather and it was hot at the time.

Q. And was he ever, did he ever have his legs handcuffed during this questioning? A. No, sir.

Q. And you didn't even see any rope around there or anything, did you? A. No, sir, I didn't.

Q. All right. Now with respect to this, you didn't take him back to the same place you got him, is that right? A. That is right. We took him back to O Hall.

Q. O Hall? A. Yes, sir.

Q. Now, was he placed in a cell with someone else? A. As I remember it, he was placed in a cell by himself.

Q. And do you know of your own knowledge, whether or not the Defendant was given anything to eat over there for several days? A. I wasn't in charge over there, and I couldn't say about that.

[432] Q. Who was in charge of that place? A. I don't know.

Q. Who told you not to take him back to his cell? A. That was our instructions in handling the investigation, that nobody was to be taken back to the cell that they came from. Some of the fellows requested not to be taken back.

Q. Did this Defendant ask not to be taken back to his cell? A. Not to my knowledge.

Q. He had been questioned previously by other State Highway Patrolmen, hadn't he? A. Not that I know of.

Q. You didn't know that? A. No.

Q. I have no further questions Your Honor.

Redirect Examination by Mr. Riley

Q. Trooper, the Defendant, in addition to the written statement made oral statements, didn't he? A. Yes, sir.

Q. I see. A. Yes, sir he did.

Q. Those oral statements were—some were made before this written statement and some after? A. He went over his activities of this particular time orally, before he wrote out this statement.

Q. Did you have any conversation with him after he wrote it [433] out? A. I asked him one question after he had written the statement before we started back.

Q. I believe that is all.

Recross-Examination by Mr. Hennelly

Q. I am going to ask you one question Trooper, were all of the admissions which the Defendant made, in the oral questioning, were they incorporated into the written statement? A. I don't know what is in that statement as far as reading it over. I have never read the statement over, even at the time or since, but did make notes of his oral statement, which I do have.

Q. You have them with you now? A. Yes, sir.

Q. May I see them? Do I understand that during the oral statement, that the Defendant told you that some of the men were masked around there? A. He made a statement that there were a couple of fellows in the cell at the time this killing was going on, that had masks on, and he didn't know for sure who they were.

Q. Now, incidentally, were you seated at the table while writing these notes? A. Yes, sir, I was sitting at

a table writing, with Lieutenant Eitzman and Sergeant Little, when they were questioning him.

[434] Q. Was anybody telling him what to put in that statement? A. No, sir.

Q. That statement about his age, twenty-five years of age, nobody told him about that, did they? A. I don't know whether that is even in the statement or not. I didn't write this statement and never have—

THE COURT: I believe I will have the Reporter mark this Exhibit, make it Court's Exhibit 1, just for identification purposes, same being the statement, or the notes that the witness, Trooper Caldwell, has testified he made at the time of the hearing, and which the attorney for the defense has referred to in his questioning.

Reporter marked Exhibit Court 1.

Q. To close this thing out Trooper Caldwell, at the time that the Defendant left, the time you took him and deposited him in O Hall, he was in the same physical condition as he was when you first brought him from Death Row, is that right? A. That is right.

Q. Did he make any complaints to you of any kind? A. Not to me, he didn't no.

Q. Did he talk to you as you drove him back to O Hall? A. Yes, sir.

Q. And did he tell you then that his hand was hurting from being held up? A. Hand?

[435] Q. His hand, yes, sir. A. No, I don't know anything about any hand.

Q. What did he talk about as you were driving back? A. I don't recall.

Q. You didn't make any notes on that, did you? A. No.

Q. Thank you.

MR. RILEY: You didn't make any notes while you were driving, did you?

A. No.

Q. That is all.

THE COURT: I wonder if you would just dictate your writing on that on both sides to the Reporter, and let him—so he may have it in the record. I want to say to counsel for the Defendant, that the reception of this in evidence is not any indication that this matter is, that these notes as written by the witness are going to be received and presented to the Jury. That is a separate matter and apart.

MR. HENNELLY: In addition to that, I am certainly going to object to them being made a part of the transcript, part of the official transcript in this case, if it becomes necessary to use a transcript, and I think that it would be highly prejudicial and I think that they amount to, in a degree, to receiving evidence in the case if the Court sees fit to hold the statement to be involuntary, after the Defendant's [436] evidence is put on. I don't think this record should include that which is self-serving, and which is hearsay, and that is this officer's notes.

THE COURT: Now the record shows that counsel for the Defendant—that the witness mentioned that he had notes, and counsel for the Defendant asked him about if he had those notes, and he produced them, and counsel for the Defendant read them, and the Court then requested the right to read them, and I want the record to show what I read. Now, I have a right to look at that in connection with other matters relative to the hearing upon the admissibility of the statement. I am not going to let it go before—well I want to make that statement about letting it go to the Jury, because it hasn't even been offered, but I am merely saying that the fact that it is being received here, and I am asking the witness to dictate to the Reporter, into the record, what is contained in his notes, so that the transcript might show what it is that he has referred to, and that counsel has referred to, but in doing so, it does not

mean that same will be received in evidence for the purpose of the Jury seeing it. It is only for this hearing before the Court. Actually the trial of this case is before a Jury, and the Jury are the ones to pass upon the facts of the case, and not the Court, and so I don't think it would prejudice the Defendant one way or the other in the trial in—so your objection is overruled [437] and you may dictate to the Reporter.

A. At the heading, I have Stidham Notes 9-27-54, 11:25 A.M. I was in Death Row when it all started. I believe Kenton was the one who opened my cell to let me out. Stidham stated he cut Donnell's throat with a kitchen knife while Kenton held him from behind. Also that Laster stabbed him several times, with an ice pick or a sharp end of a screw driver. He did not know for sure who hit him with the sledge hammer. Stidham said he wanted to kill old Creighton more than he wanted Donnell, as he had a personal grudge against Creighton.

Q. How did you spell Creighton? A. C-r-e-a-t-o-n.

THE COURT: Go ahead.

A. As he had a personal grudge against Creighton, but only had it in for Donnell because he had heard that he had snitched on several of the boys and they had got a load of time out of it. Also he would still kill Creighton if he got the chance. Cut Donnell's throat with a kitchen knife about six or seven inches long. Somebody in Donnell's cell had a flashlight, they turned on and off. Stidham thought Thompson and Linder were in Donnell's cell and hit him with the sledge. He did not know for sure who they were, as they were masked, but heard them call each other Linder and Thompson. We tried to kill Creighton before we went to Donnell's cell to kill him. [438] That is all.

MR. HENNELLY: I want the record to show that I am objecting to those notes, even being in the record,

for the reasons that I have heretofore stated. I can certainly understand Your Honor wanting to read them to make up your own mind, but to some Appellate Division which I hope won't be necessary, I am saving my record.

THE COURT: All right. You may take your statement now with you, your notes with you. That is all.

THOMAS JENNEMAN,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. Will you state your name please? A. Thomas Jenneman.

Q. Where do you live sir? A. 4549 LaClede, St. Louis, Missouri.

Q. Are you a member of the St. Louis Metropolitan Police Department? A. Yes, sir.

Q. For how long? A. For thirteen years, last December 24th.

Q. And I will ask you whether you are acquainted with the Defendant, James William Stidham? A. Yes, sir.

Q. I wil ask you whether you saw him inside of the Missouri [439] State Penitentiary on September 27th, 1954? A. Yes, sir, I did.

Q. Where did you see him on that date? A. Down in the baseball field, in the athletic shed.

Q. Were you there when he came in? A. I went and got him.

Q. Who went and got him? A. Trooper Caldwell and myself.

Q. And where did you go to get him? A. In Death Row.

Q. Where did you take him? A. Down to the baseball field in the athletic shed.

Q. Is that the field house or recreation building? A. Yes, sir.

Q. Is that what that is called? A. Yes, sir.

Q. Were you there all the time that Stidham was there? A. Yes, I was.

Q. In that building? A. Yes, sir.

Q. Who took him back? A. Trooper Caldwell and myself.

Q. Where did you take him to? A. To O Hall.

Q. And I will ask you if you—I will show you what has been [440] marked as State's Exhibit No. 16 and 16-1, and have you ever seen that before? Officer, does that have your name on the second page? A. Yes, sir, it does.

Q. And your initials on the second page? A. Yes, sir.

Q. Who wrote out those two sheets of paper? A. The Defendant.

Q. Now, prior to writing that statement, did you hear Stidham make any oral statement regarding the death of Walter Lee Donnell? A. Yes, sir, I did.

Q. Now, before he made those statements, did you, or anyone else threaten him in any way? A. There was no threats made by anyone.

Q. Did you or anyone else promise him anything to get him to make the statement? A. No, sir.

Q. Did you or did anyone else ever hit him or strike him or beat him, either with your hands, fists or any other instrument? A. No, sir.

Q. Did you or did anyone else there exert any physical force, or violence of any kind on Stidham to get him to make that statement? [441] A. No, sir.

Q. That is all.

Cross-Examination by Mr. Hennelly

Q. Officer, when you took him to O Hall, were there any other prisoners in O Hall? A. Yes, sir.

Q. Were there any other prisoners in the cell that you put him into? A. No, he was in by himself.

Q. Do you know of your own knowledge, whether or not anyone could communicate with him after he was placed in that cell? A. I don't know.

Q. Do you know whether or not at anytime, from the time you took him from Death Row down to the shack, whether or not the Defendant had asked you if he could get a lawyer or if he couldn't confer with some members of his family? A. I don't recall that being asked.

Q. You don't recall that? A. No.

Q. Would you say that it wasn't done? A. Yes, sir, I will say it wasn't done.

Q. You say that it wasn't done? A. Yes, sir.

Q. And he was in there for about twenty-five minutes or twenty [442] minutes or so, in which he denied everything, but then he told you everything, is that right? A. Repeat that please.

Q. I say he was in there for the first twenty or twenty-five minutes, and he denied that he had anything to do with the murder of Donnell, didn't he? A. He was being questioned for approximately twenty-five minutes.

Q. During this questioning did he deny that he had anything to do with the murder? A. He did,—I don't recall that he did.

Q. Were you right there? A. Not right standing right next to him.

Q. How close were you to him officer? A. At the time, I was approximately ten feet away.

Q. Did you hear all the questions? A. Most all the questions.

Q. Did you at anytime during the first twenty minutes that he was in there, hear him admit that he had anything to do with the murder of Donnell? A. After he started writing.

Q. After he started writing? A. Yes.

Q. That was the first time? A. No, I beg your pardon, when he made an oral statement.

[443] Q. Now, how long did he deny, if he denied it, how long did he deny that he had anything to do with the murder? A. I wouldn't say.

Q. Wouldn't say? A. No.

Q. Was he ever handcuffed by the feet? A. No.

Q. Did you ever see a rope around there? A. No, sir.

Q. Did he complain to you about any injury to the nerves of his arm at all? A. I didn't hear of any injuries. I never heard him complain of any injury.

Q. You didn't take him back to the same place you brought him from? A. No.

Q. I have no further questions.

MR. RILEY: That is all.

MR. RILEY: Call Charles Billings.

CHARLES BILLINGS,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Riley

Q. State your name. A. Charles Billings.

Q. How old are you sir? A. Thirty-five.

[444] Q. Are you a member of the St. Louis Metropolitan Police Department? A. I am.

Q. For how long? A. Eleven years.

Q. I will ask you if you are acquainted with the Defendant, James William Stidham? A. Yes, sir, I am.

Q. Did you see him on September 27th, 1954, in the Missouri State Penitentiary? A. Yes, I did.

Q. Where were you when you saw him? A. In the field house.

Q. Who was present? A. Lieutenant Eitzman, Sergeant Little, Patrolman Jenneman and Patrolman Overbeck and Trooper Caldwell and myself.

Q. I will show you what has been marked as State's Exhibit 16 and 16-1, does that Exhibit bear your signature? A. Signature and my initials.

Q. Who wrote out that Exhibit? A. James Stidham.

Q. Did you see him write it? A. Yes, sir, I did.

Q. Did you see him sign it? A. Yes, sir, I did.

Q. I will ask you if prior to the time that he made this [445] statement, that he made an oral statement in your presence? A. Yes, he did.

Q. Now, before he made any statement at all, did you or did anyone in your presence promise him anything to get him to make that statement? A. No.

Q. Did you or anyone in your presence threaten him in any way to get him to make that statement? A. No, sir.

Q. Did you or anyone else strike him, beat him or exert any physical violence whatsoever toward him to get him to make that, or the oral statement? A. No.

Q. That is all.

Cross-Examination by Mr. Hennelly

Q. Officer, did you hear any conversation with respect to the Defendant's watch? A. I don't recall.

Q. I will ask you if you at any time, while the Defendant was there, you heard the Defendant request a lawyer? A. No.

Q. Did you hear him request permission to talk to any members of his family? A. No.

[446] Q. Now Officer, did you see any rope in that room? A. No.

Q. And while you were there, nobody threatened him or did anything to him? A. No.

Q. Did anybody even lay a hand on him? A. No.

Q. Nobody did a doggoned thing to him, he just changed from denying it and he admitted the whole thing, is that right? A. Yes.

Q. And then he wrote out this statement, is that right? A. That is right.

Q. Is all of the information that he gave in the oral statement, is that incorporated into the written statement? A. Yes, as far as I can recall.

Q. I have no further questions.

MR. RILEY: That is all we have Your Honor.

MR. HENNELLY: I would like to call Mr. Stidham to the stand.

JAMES WILLIAM STIDHAM,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Hennelly

Q. What is your name? A. James William Stidham.

Q. Speak loudly Mr. Stidham. A. James William Stidham.

[447] Q. Mr. Stidham, were you questioned with respect to the death of Walter Lee Donnell, by either the State Highway Patrol or by any of the authorities after the night of September 22nd, 1954? A. Yes, I was on many occasions.

Q. Who was the first one to question you? A. The first ones to question me was probably eight or ten officers which included St. Louis Patrolmen and State Troopers, they came to my cell.

Q. When was that? A. That was on September 23rd, sometime before noon.

Q. And were you questioned at any time—excuse me. Did you deny any complicity in the murder of Walter Lee Donnell?

MR. RILEY: Object to him leading the witness.

Q. Very well, I withdraw the question. The question can be withdrawn.

THE COURT: All right.

Q. What did you tell those people who were questioning you with respect to whether or not you had anything to do with the death of Walter Lee Donnell? A. I told them I didn't know anything about it, that I didn't participate in it. I didn't know who killed him and I was informed that I had better learn something about it or—

Q. Who informed you of that? [448] A. That was the St. Louis Patrolmen and the State Highway Patrol.

Q. Now, were you questioned at anyplace other than in your cell in Death Row? A. Well, I was probably questioned three times that day in my cell, and later on that night I was carried to what is called the prison classification room.

Q. Now, was that the questioning that has been referred to here in Court, were you questioned in the room that has been, which is indicated on State's Exhibit 11? A. Yes, sir, I was.

Q. Now, who questioned you at that time? A. At that time I remember Lieutenant Barton, State Highway Patrol, Sergeant Tony Caldwell.

Q. Anybody else? A. Sergeant Little, he was present, E. V. Nash was present and Barkley.

Q. And what did you tell those officers and people questioning you on that occasion, with respect to the death of Walter Lee Donnell? A. That I knew absolutely nothing about it.

Q. And do you know what time of the day or night you were questioned? A. I was called to the Classification room at three A.M.

Q. Three A.M. in the morning sir? [449] A. Yes, sir.

Q. What day would that have been, do you know? A. That would have been on the 24th.

Q. And do you know how long you stayed in that room? A. Approximately an hour and a half.

Q. An hour and a half? A. Yes, sir.

Q. Now, after they finished questioning you at that place where were you sent? A. Back to my regular cell.

Q. Back to your regular cell? A. Yes, sir.

Q. Were you questioned at anytime after that? A. Yes, sir, I was.

Q. When were you questioned the next time? A. That was on the 26th.

Q. And who questioned you then? A. It was a group of Troopers, State Troopers and the St. Louis Police.

Q. Do you know who any of them were? A. I recall Sergeant Nash.

Q. And where were you when you were questioned on that occasion? Were you in the classification room? A. Yes, sir.

Q. And what did you tell them at that time with respect to [450] your knowledge of the death of Walter Lee Donnell? A. Still didn't know anything about it.

Q. Where were you taken after that questioning? A. Back to my same cell.

Q. And during this time, had you made any attempt to contact any counsel? A. Yes, sir, I had.

Q. What did you do? A. Two days after the riot ended, the mail clerk, his name is Mr. Fiel, he came around and informed all the prisoners that they would be permitted to write one letter saying that they were all right. So

at that time I sat down and I wrote a letter asking my people to come see me and also get me a lawyer.

Q. All right. A. I put enough postage on it to register the letter, but it never left the prison.

Q. Never left the prison? A. No, sir.

Q. Now, who were the lawyers you were attempting to contact at that time? A. Richard M. Webster.

Q. Where is his office? A. First National Bank Building in Carthage, Missouri.

Q. Did you, were you questioned at anytime after that Mr. Stidham? [451] A. Yes, sir, I was.

Q. And when was the next time you were questioned? A. Well, in my cell, I was questioned probably twenty-five times.

Q. Who questioned you on those occasions? A. Different St. Louis Policemen and State Highway Patrolmen.

Q. And were you questioned, was the next time you were questioned after these times that you have so far indicated to His Honor, Judge Weber, the time that you were questioned over at the athletic shed? A. That was on the 27th.

Q. On the 27th? A. Yes, sir.

Q. Now, tell the Court and Jury exactly what transpired from the time you left your cell in Death Row, until you, first of all until you got to the athletic shed? A. On the morning of the 27th, about, approximately ten A.M., two officers came to my cell, and before they put the cuffs on me, told me to take off that watch before they messed it up, so I took it off and I gave it to a trusty.

Q. Who was the trusty, do you know? A. Leon Wade.

Q. Leon Wade? A. Yes, sir.

Q. Go ahead. A. And my hands were cuffed behind and I was taken outside of [452] B and C Building, where a St. Louis Police car or State Highway Patrol car was

sitting, and put in there and driven to the athletic shed or field house.

Q. All right, what happened over at the athletic shed? A. When I walked into the door, they told me to sit down on a stool. I sat there and as soon as I sat down, some officers got in front of me and began to put handcuffs and a belt on my legs, and at the same time, some officer took the cuffs off from behind me, and I had a coat on and had handcuffs on my wrists behind me.

Q. Now, let me ask you this, were you standing or sitting at this time? A. Sitting.

Q. Do you know which officer in the room did that? A. No, sir, I don't, because there was at least four or five participating in it.

Q. All right. A. There was a couple behind me and a couple in front of me putting the belt and cuffs on me.

Q. Was everything that was done there, was it done by those officers who have testified in this court here today? A. Yes, sir.

Q. All right. Now then, after they tied your hands behind you, and manacled your feet, tell the Court what happened? A. Well, one of the officers said he wanted me to tell him [453] everything that happened in that riot.

MR. RILEY: Object to that unless he can say who said it.

A. Lieutenant Eitzman.

MR. RILEY: All right.

A. And I told him that I already had been interrogated on numerous occasions, and that each time I told the officers that I didn't know anything about the riot and that I certainly didn't know who killed Walter Lee Donnell, and I didn't participate in the killing of Walter Lee Donnell, and I told him that if it wouldn't convince him, that I wasn't in it, that I would be willing to submit to a

lie detector test, and go under truth serum, and at that time Lieutenant Eitzman said all right, give him the test. Apparently at that time they had already put a rope between the handcuffs because I was lifted up in the air where all my weight had to bear on my two arms.

Q. Now, were you taken out of the chair before that was done? A. Yes, sir.

Q. And how long were you in there before you were hung up? A. Probably not more than ten minutes.

Q. And up to that time you had denied anything to do with it? A. Yes, sir.

Q. Now, how long did you hang up there, if you know? [454] A. I would say fifteen minutes the first time.

Q. And did they, were any officers having any conversation with you while you were hanging? A. Yes, sir.

Q. How far off of the ground were your feet? A. Probably six inches or maybe a foot.

Q. And what happened, did they cut you down or let you down? A. They let me down after about fifteen minutes.

Q. Then what happened? A. They helped me over to a table. I couldn't walk because I still had those cuffs and belt on my legs, and they tried to talk me into signing a statement that they wanted to dictate to me.

Q. All right. A. And I refused to sign it. Consequently Lieutenant Eitzman ordered me hung up again.

Q. All right. Now did they hang you up in the same method and manner you had been previously hung up? A. Yes, sir.

Q. How long did you remain in that position the second occasion? A. While I was up, I was beaten with clubs and I passed out, and became unconscious, lost consciousness twice, and I don't know how long I hung up, but I heard one of the officers [455] say that I had been

hanging there for about thirty-five minutes. My left arm became paralyzed as a result of that hanging.

Q. Was there some numbness in your left hand as a result of that? A. Completely numb, no feeling in it whatsoever.

Q. What happened after that, after you had been hanging there for that length of time, tell His Honor, what happened then? A. As a result of that thirty-five minutes hanging, I agreed to write a statement that they dictated to me, that Sergeant Little dictated.

Q. Did you, why did you sign this, why did you write this statement? A. I lost consciousness twice and I felt my arms were about to come out of the sockets, and I couldn't endure the torture any longer.

Q. They forced you to sign it? A. Yes, sir.

Q. Now, I am going to ask you, that statement that you wrote down, is the statement which has been offered to the Court and for the purposes for which this hearing is being presently conducted, State's Exhibit 16— A. This is the statement that Sergeant Little dictated to me.

[456] Q. Now then, I am going to ask you, how old does that statement say you are? A. It says that I am twenty-five years of age.

Q. How old were you on the 27th of September, 1954? A. I was twenty-eight.

Q. Twenty-eight? A. Yes, sir.

Q. Who told you to put down twenty-five? A. Sergeant Little.

Q. Now then, after you left there Mr. Stidham, were you taken back to your cell again? A. No, sir, I was taken to O Hall.

Q. All right. Now tell His Honor just the circumstances under which you went to O Hall and how long you remained there? A. I went to O Hall approximatey 12:40 or 12:45 on September 27th, and I was placed in a cell,

where all there was was a bare floor, no running water in there or any toilet fixtures and I was only allowed to keep a pair of pants and shoes on. All the windows were broken out in there. I wasn't given any food or water for three days.

Q. How much did you weigh on the night of September 27th 1954, to the best of your knowledge? A. Well, two days, it was either two or three days before the riot when I weighed, and I weighed one hundred and eighty-four.

[457] Q. One hundred and eighty-four pounds? A. Yes, sir.

Q. Did you have reason and opportunity to be weighed at sometime after you had gone through this ordeal in the shack? A. Yes, sir, I did.

Q. Where were you weighed? A. That was at the U. S. Medical Center at Springfield, Missouri.

Q. How much did you weigh on that occasion? A. One hundred and fifty-nine pounds.

Q. And do you know how much, you know what date that was that you were weighed then? A. That was on September 29, 1954.

Q. Now, during the time that you were in that cell in O Hall, were you visited by anyone? A. A Catholic priest attempted to visit me, but he wasn't permitted to, because the officers already had received instructions that nobody was to see me.

Q. All right. Now then, how long did you remain in that cell in O Hall? A. Three days, two days I believe, and I left on the morning of the third day.

Q. Now, tell His Honor what happened when you left the cell in O Hall? [458] A. Some officers came down and advised me that I was being taken to Court that morning for arraignment and they told me that—

Q. Excuse me, for the purpose of the record, do you know who that was that had this conversation with you? A. Well, this Sergeant Little, he was one, and I am certain Billings was one. I was advised that I had better waive preliminary hearing when I arrived in Court and that they had already given us hooziers a lesson up in the Penitentiary.

Q. Now, did they, was there any conversation with any of those officers with respect to your telling anyone about what happened there? A. At anytime you mean while I was in O Hall?

Q. No, lets say while you were even over at the shack, did any of the officers say anything with respect to whether or not you could tell anybody what happened? A. No, sir.

Q. All right. Did any of them at anytime tell you, have any conversation with you with respect to telling anybody what they had done to you there? A. Yes, sir. They told me that I had better never divulge being hung up, because the Federal Bureau of Investigation would come around and investigate it and I would be casting a reflection upon them, and that they had ways of taking care of me later on, if I did divulge it.

[459] Q. Now, did you go, did you go over to the arraignment? A. Yes, sir, I did.

Q. What happened there? A. Well, myself and six co-defendants appeared in Court and numerous officers of the St. Louis Police Department and Highway Patrol had already threatened and told us in various words that we had better waive preliminary hearing and we absolutely had better waive it, and so we appeared before the Magistrate Judge and I believe the charge was read off, and I immediately requested the appointment of an attorney and Mr. Riley here, he spoke up and he tried to stop me from saying anything, and I even shouted out in the Court Room, and asked to speak to an attorney, because I believe there

was some in the Court Room, and again he stopped me, and I was refused permission to call an attorney.

Q. Now, was this before or after you had been down to Springfield? A. That was before I went to Springfield, immediately after then, five minutes later, I was taken to Springfield.

Q. Now, when you went to Springfield, were you examined by some doctor down there? A. Yes, sir, I was.

Q. And did you tell the doctor what had happened? A. I certainly did.

Q. And tell His Honor, what was your physical condition with [460] respect to your hand, when you got down there? A. At that time my left hand was paralyzed and these three, two fingers were drawing up and I had no movement in my hand whatsoever.

Q. Did some doctor examine that? A. Two of them did, yes, sir.

Q. And did they examine any other bruises on your body? A. Yes, sir, they did.

Q. Did you have some other bruises on your body? A. On my legs where the handcuffs were, and where I had been beaten with sticks and clubs.

Q. And those things, did they put them in the record while you were there? A. Yes, sir, they did.

Q. No further questions.

Cross-Examination by Mr. Riley

Q. Now, where were these bruises? A. On my left hand, right hand also, and on my legs.

Q. Wait a minute, where on your legs? A. Down here near the ankle, on the shin.

Q. How big were these bruises? A. The one on my left hand, I would say it circled the entire part of my wrist, on the right hand was approximately the same.

[461] Q. Where else did you have any bruises? A. On my legs.

COPY BOUND

Q. Where on your legs? A. On my shins.

Q. How did you get the bruises on the two shins? A. Well, I was beaten with clubs there.

Q. Where else did they hit you? A. Well, they hit me all up and down the legs.

Q. All up and clear up all over your legs? A. My legs there, down here and also on my stomach.

Q. Your stomach? A. Yes, sir.

Q. What other part of your legs other than your shins? A. Down near my ankles.

Q. Well, did they hit you all over your legs? A. Yes, sir.

Q. All over? A. Yes.

Q. How hard?

MR. HENNELLY: Object to that, that would be a conclusion.

A. I can't answer that.

Q. Tell this Court how hard they were striking you with this club or whatever they were using. A. I couldn't tell, because of the position I was in, I was being suspended in mid-air at that time.

[462] Q. You were being suspended in mid-air? A. Yes, sir. The greater portion of the pain was in my shoulder.

Q. Were you hit on the back of your legs? A. Well, possibly I was.

Q. Well, were you or weren't you? A. The pain was so intense, that pain from the sticks was minor at that time.

Q. What kind of a stick were they using? A. Seemed to be what they call a stick, ballbat.

Q. How many of them were using them? A. I couldn't say, probably three or four.

Q. Three or four? A. More than two.

Q. Were they swinging hard at it or just bunting? A. They were swinging.

D CLOSE IN CENTER

Q. Swinging real hard? A. Swinging real hard.

Q. Did they hit you about the neck or head? A. No.

Q. Did they do anything at all to your face or head? A. No. (Indicated by shaking head)

Q. You will have to answer, because the gentleman has to record it. A. No.

[463] Q. Have these bruises on your stomach—did you have bruises on your stomach? A. They were bruised, but it wasn't scratched.

Q. Well— A. It was red, yes.

Q. How long did that redness stay there? A. At least a couple of days, I don't remember just how long it was.

Q. It was there a couple of days? A. Yes, sir.

Q. Now, how many days do you say that you stayed in O Hall without anything to eat? A. I got put in there on the 27th and I didn't have anything to eat until the morning I started to leave on the 29th.

Q. What time were you put in there on the 27th? A. Probably 12:45.

Q. What time did you get out on the 29th? A. About eight o'clock in the morning.

Q. All right, you would have had to stay in there from 12:45 on the 27th until the 29th, that would make it two days, wouldn't it? A. I said about two days.

Q. On your direct examination, didn't you just say you was put in O Hall for three days without anything to eat or drink? [464] A. I said I got out on the third day.

Q. Didn't you just before that say you were put in O Hall for three days without anything to eat or drink? A. I said we got out on the third day Mr. Riley. If I did say the other, that is what I meant, we got out on the third day.

Q. Then it wasn't three days, it was less than two days? A. It was on the third day, anyhow.

COPY BOUND

Q. Now, how many men were in the classification room on the morning of the 24th, that you were questioned? A. I would say there were fifteen.

Q. Fifteen? A. Yes, sir.

Q. Who were they? A. Well, at that time, I didn't know any of them, their names, except one.

Q. Who was that? A. Sergeant Olin Curtis.

Q. Who? A. Olin Curtis.

Q. Who is Olin Curtis? A. He is a member of the State Highway Patrol.

Q. From where? A. Kansas City, Missouri, I believe.

Q. Who else? A. At that time he was the only one that I knew. Later on I learned some of the others' names.

[465] Q. Who were they? A. Lieutenant Barton, Nash, Inman, Barkley.

Q. What about Caldwell? A. He was there.

Q. What about Little? A. I don't know about Little. I think he was there though.

Q. You said he was there a while ago. A. I am pretty certain he was there.

Q. Now, that is seven, who were the other eight? A. I never did learn their names.

Q. Were they Patrolmen or Policemen? A. I—

Q. And which were they? A. I don't know the rest of their names.

Q. I asked you which—

THE COURT: He asked you whether they were Patrolmen or Policemen.

A. They were Highway Patrolmen.

Q. All eight of them? A. The ones that I just named.

THE COURT: He is asking you about the ones you didn't know.

CLOSE IN CENTER

A. During that first interrogation in the classification room, I don't recall any St. Louis Policemen. I did see some City Policemen around.

Q. When are you talking about, in the room? [466] A. I don't recall any in the room.

Q. Well, you say you were questioned twenty-five times in your cell on Death Row? A. Well, it was like this Mr. Riley, approximately every hour there would be a group of officers patrol in front of the cell, and each group of officers, some of them missed, but several groups would stop in front of my cell and interrogate me about this crime.

Q. Did they come inside the cage? A. No, they was on the outside of the second set of bars.

Q. Who was celling on the east side of you? A. East side of me?

Q. Yes. A. Nobody.

Q. Who? A. The shower was on the east side.

Q. What? A. The shower was on the east side.

Q. Who was celling on the west side? A. Heaton.

Q. And who else was down there? A. There was Hawkins, Reece and Ducker.

Q. Now, these Patrolmen were questioning you from outside of the cage, and these other inmates could hear them, couldn't they?

MR. HENNELLY: Object to that being a conclusion on the part [467] of this witness.

THE COURT: What tone of voice did they use? A. They used an ordinary tone to begin with, they would start out in a reasonable tone of voice, but usually end up by making a threat to me.

Q. Now, how do you know it was twenty-five times? A. I only estimated that.

Q. Now, who was the Patrolmen, or who were they? A. I don't know their names.

Q. Have you ever seen them since then? A. Possibly I have, most likely I have.

Q. What is that? A. Most likely I have seen them since then.

Q. Well, where have you seen them? A. There was several of them around the Penitentiary for quite a few days after the riot.

Q. Well, I mean, were they, did you see them around there after the 27th? A. After the 27th?

Q. Yes. A. Yes, I seen them there after the 27th. I seen them after the 29th. That is in O Hall.

Q. After the 29th? A. Yes, after the 29th, I was not in the prison.

Q. Then you couldn't have seen them after the 29th? A. I didn't say I seen them after the 29th.

[468] Q. Now, what was this rope that lifted you up, what was it on? A. It was a web partition separating this room from another room, and I know that the end of this rope was tied into the web partition, and it was extended up to the top of the roof.

Q. Suspended in the top of the roof of that recreation or field house? A. Yes.

Q. And what was it suspended in up there? A. I never did look directly up there Mr. Riley. When I was hanging in that position I doubt if a man could look straight up.

Q. If you had looked, would you have been surprised to know that that was a celatex ceiling and no rafters there?

MR. HENNELLY: Object if Your Honor please, to the form of the question, it is argumentative and a statement.

THE COURT: Sustained.

Q. Did you know that that is a solid ceiling without rafters showing? A. I know I was hung up down there Mr. Riley, and I know it was near that web parti-

tion, because one time I put my feet on that web partition and one of the officers got between that and myself. In fact, I would be willing to demonstrate to you right here in this court room how I was [469] hung up, and the demonstration there would also show you how my arm became paralyzed and deadened.

Q. Is this Exhibit 16 and 16-1 in your own handwriting? A. Yes, sir.

Q. I think that is all.

MR. HENNELLY: Come down.

M. E. CURTIS,

BEING SWORN, TESTIFIED:

Direct Examination by Mr. Hennelly

Q. Give His Honor your name please. A. M. E. Curtis.

Q. Where do you live Mr. Curtis? A. Springfield, Missouri.

Q. What is your business or occupation? A. I am records clerk at the medical center for Federal Prisoners at Springfield, Missouri.

Q. What are your duties as medical clerk down there? A. I maintain the records that are compiled at the Institution on all inmates.

Q. Do you maintain and keep the records of all people who have been quartered at the prison? A. Those that are committed there.

Q. And do you keep those records in the normal course of business? A. I do.

[470] Q. And pursuant to a subpoena duces tecum which His Honor issued out of this Court and which was served on you sometime ago, did you bring with you a record of one James Stidham? A. I did.

Q. Mark this Exhibit E.

Reporter marked Exhibit E, record of hospital at Springfield.

MR. RILEY: If he is going to take part of it out, I would rather he would now, I wouldn't even know how to object to all of that.

MR. HENNELLY: It hasn't been offered yet.

MR. RILEY: Have you got it all marked?

MR. HENNELLY: I am going to have it marked E-1, E-2, and E-3.

Reporter marked E-1, a sheet in the file of James Stidham at Springfield.

Reporter marked E-2, a sheet in the file of James Stidham at Springfield.

Reporter marked E-3, a sheet in the file of James Stidham at Springfield.

Q. Now, Mr. Curtis, I am going to hand you what has been marked at this point for the purpose of identification, Defendant's Exhibit 1, would you tell his Honor, Judge Weber, what that is? [471] A. It is a consultation sheet prepared by Dr. Hatcock on September 30, 1954.

Q. Who is Dr. Hatcock? A. He is the doctor regularly assigned to the Institution at Springfield.

Q. Is Dr. Hatcock still assigned to Springfield? A. He is.

Q. How do you spell that? A. H-a-t-c-o-c-k.

Q. And that handwriting, do you recognize that as Dr. Hatcock's handwriting? A. I do.

Q. And that—is that a record that is kept in the normal course of business? A. It is.

Q. And is that one of the records, which are the Official Records of your Institution? A. Yes, sir.

Q. And you are the Official Custodian of that record? A. Yes, sir.

Q. I offer this in evidence.

MR. RILEY: Isn't Dr. Hatcock here?

MR. HENNELLY: He is in town. He has been subpoenaed as a witness here and is here. He is on the way from the hotel.

MR. RILEY: If he is coming and going to identify this, I have [472] no objection to it.

THE COURT: Let me see it.

MR. RILEY: I want the doctor here, and he has been subpoenaed, and I want him here to testify.

MR. HENNELLY: He will be here. I represent to the Court that he will be here.

THE COURT: All right, it will be received for the purpose of—can it be left, well it is part of this file.

MR. HENNELLY: They will go back and send a photostatic copy to the Reporter, won't you? A. Yes, sir.

MR. HENNELLY: That is what they have done in all the other trials.

Exhibit E-1, having been received in evidence, but the Reporter not having been furnished a copy of same, same is not copied into this transcript at this time.

MR. HENNELLY: Now, I want you to look, if you will, at that which has been marked for the purpose of identification as Defendant's Exhibit E-2 Mr. Curtis, and tell His Honor what that is? A. It is the initial physical examination prepared by Dr. F. L. Halleck, on September 29, 1954, at approximately 3:05 P.M. on September 29, 1954.

Q. And is that sheet and that Exhibit in reference to one James Stidham? [473] A. It is.

Q. And is that part of the Official Records of your institution? A. It is.

Q. And are those the records which are kept in the normal course of business and in your custody and control sir? A. It is.

Q. Who signed that sheet of paper? A. Dr. F. L. Halleck.

Q. And I will ask you at this time what was Dr. Halleck's position with your institution? A. He was an individual assigned to medical staff, Medical Center.

Q. Is he at this time still in the State of Missouri or attached to your institution? A. Not in the State of Missouri and not attached to our institution.

Q. At this time Your Honor, I offer Exhibit E-2.

MR. RILEY: We don't have any objection at this time, but reserve the right to object at any other time it is offered.

THE COURT: Whose handwriting is this in, if you recognize it? A. Dr. Halleck's.

Q. You know his handwriting? A. Yes, I do.

[474] THE COURT: All right, it may be received in evidence for the purpose of this hearing at this time.

Q. I am now going to show you now, which has been marked for the purpose of identification as Defendant's Exhibit E-3, and I am going to ask you what that is sir? A. It is Record Form 9, commonly called the Marshal's receipt, indicating that we accepted, you want the names read?

Q. Is Stidham's name on that sheet? A. Stidham from the custody of the Missouri State Penitentiary, on September 29th, 1954.

Q. I am going to ask you, does that indicate anything else but the receipt of the custody of the Defendant Stidham? A. Yes, it shows our institution number, Missouri State Institution number and height and weight of the individual.

Q. Shows his height and weight, is that right? A. Yes, sir.

Q. Now, is that the record which is kept in the normal course of your business down there sir? A. It is.

Q. One of the official records of your institution? A. Yes, sir.

Q. And you are custodian of those records, and they are kept under your custody and control? A. Yes, sir.

[475] Q. At this time Defendant will offer Exhibit E-3 Your Honor.

THE COURT: It may be received in evidence.

Exhibit E-3, having been received in evidence, but the Reporter has not been furnished a copy of same at the time of preparing this transcript, and same is not copied into this record.

MR. HENNELLY: This being one of the things that I don't think they do have photostats of, I think this is a very short thing that I could probably put into the record. A. There is a photostat already made.

Q. Would you tell His Honor what that shows to be the height and weight of the Defendant at the time that he went, he entered your institution? A. Weight 160 pounds, height 68 inches.

Q. Thank you. I have no further questions of this gentleman.

MR. RILEY: You are going to stay here?

A. Yes.

MR. RILEY: I don't have any questions.

THE COURT: Are you going to use the doctor at this time?

MR. HENNELLY: Yes.

DR. THOMAS A. HATCOCK,

BEING SWORN, TESTIFIED:

Direct Examination, by Mr. Hennelly

Q. What is your name please? [476] A. Thomas A. Hatcock.

Q. What is your occupation or profession sir? A. Physician.

Q. And where do you reside sir? A. And surgeon. U. S. Medical Center in Springfield, Missouri.

Q. Of what school or schools are you a graduate Doctor? A. Duke University and Vanderbilt University.

Q. When did you graduate from Duke? A. 1929.

Q. And was that your undergraduate work at Duke? A. Yes, sir.

MR. RILEY: We admit the Doctor's qualifications.

Q. Doctor, did you make an examination of the Defendant in this case, James Stidham? A. I did.

Q. I will ask you what were the Defendant's complaints at the time that you examined him?

MR. RILEY: Object to what the Defendant's complaints were, they are hearsay so far as his complaints are concerned, and are self-serving.

MR. HENNELLY: Offer it as the ground work for a hypothetical question of the Doctor, whether or not that condition the doctor found could have been caused by—

THE COURT: You can propound the hypothetical question based [477] on any evidence that may be in the record, but for the doctor to testify, would be hearsay. He may testify as to his physical findings, and you may propound a hypothetical question to him.

Q. Tell the Court what your physical findings were at the time you examined Mr. Stidham? A. It should

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be made clear to begin with, that I was asked to see this man in reference to a specific complaint.

Q. What was that complaint? A. Again, numbness involving the fingers of his left hand.

Q. And what was the date upon which you made that examination Doctor? A. I will have to look, go to the record, latter part of September, last year, but the record—

Q. You may examine the record. A. The record indicates on the 30th day of September.

Q. 30th day of September? A. Yes, sir.

Q. What did you find at that time? A. Shall I go by memory?

Q. You may refresh your memory and then— A. In following up the man's complaint, weakness of the left ring and little fingers, I noticed that he did have a loss of strength in those fingers. There was a partial loss of sensation. He described a feeling of numbness involving [478] these two digits and on testing him, the function of these two fingers appeared, the muscles appeared to be weak.

Q. Now Doctor, did you, what—were there any other physical findings? A. Not on any examination. Inasmuch as I examined him for this condition alone, I did not make a general physical examination.

Q. Now then Doctor, where is the ulnar nerve? A. The ulnar nerve of course arises up in the neck level of your spinal cord.

Q. And what is the lower extremity of the ulnar nerve Doctor? A. Well, it extends down the forearm and down to the hand and supplies the side of the hand and the last two fingers, I mean the small and ring fingers.

Q. Doctor, it does pass through the wrist, doesn't it? A. Yes, sir.

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Q. All right. Now then Doctor, assume if you will that on the night, or sometime during the 27th of September, 1954, the patient that you examined at that time was strapped, rather was handcuffed with a pair of handcuffs on his back, with his hands to his back, and assume further that he was handcuffed by the legs, and that he was, a rope was attached to those handcuffs and that he was suspended some distance from the ground, that the first instance was for a period of [479] fifteen minutes, and that sometime later he was again put up for a period of approximately half an hour, and during these times his weight was not on the ground, but that he was suspended in the air, would you say Doctor, based upon reasonable medical certainty, and upon your experience as a Doctor, that such a condition which you found when you examined Mr. Stidham, at the time you examined him, could have been caused by that hanging? A. I would.

Q. No further questions.

Cross-Examination by Mr. Riley

Q. Now Doctor, did you find any evidence of any bruises on his wrists at that time? A. Not on his left wrist. There was an old scar in the palm.

Q. Now Doctor, assuming that all that is true, as set out in the hypothetical question, wouldn't you think that such would leave a scar or abrasion of some kind on his wrist? A. No, I would not.

MR. HENNELLY: Object to the form of the question, even though the Doctor is qualified, I think that is too vague, indefinite and uncertain.

THE COURT: Well, he has referred back to your question, referred the Doctor to your question, and asked him whether [480] such would leave scars or bruises on the wrists. The objection is overruled.

Q. Doctor, do you know what handcuffs are made out of, you have seen a lot of them, haven't you? A. Yes, sir.

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Q. If a man hung up by these handcuffs, wouldn't that leave some abrasions or bruises on the skin of his wrists? A. Well, that would all depend. I can't say yes or no to that.

Well, it depends on how much pressure was put on these things, and how the pressure was distributed.

Q. Now, if he was just roped, a rope was run through the handcuffs and he was raised up off of the ground as Mr. Hennelly asked you, wouldn't that leave some bruises or abrasions or something on the skin? A. It could, but I wouldn't be willing to say that it would have to in every case.

Q. Then you mean to tell the Court that without leaving any bruises or marks whatsoever on the skin that would still damage the nerve enough to paralyze the two fingers in the hand? A. Yes, as a matter of fact, I wouldn't guess that the nerve was injured at that level. The nerve happens to be quite superficially located at the elbow level and that is the site of the injury or contusion resulting in this kind of [481] findings.

Q. Then you are not telling the Court that the injury to that wrist was caused by that, the paralyzing? A. I am not.

Q. If there was such an injury, it would be up about the elbow? A. That is the area where the ulnar nerve is most prone to be contused and injured.

Q. And did you make an examination of the elbow area? A. I did.

Q. And you didn't find anything there? A. No.

Q. Now Doctor, in Dr. Halleck's report on the 29th at 3:05 P.M., you have that there don't you? A. Yes, I think there is a copy here.

Q. Now, in Dr. Halleck's report, he says the patient has however, an old large scar over—I can't read it. A. Hypothena imminence.

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Q. Where is the hypothena imminence? A. It is that area at the base of the palm on the small and little finger, side prominence at the base of the palm.

Q. And which Dr. Halleck said could account for the difficulty, meaning the stiffness in the little finger? A. That is what he reports.

Q. Now, did you, when you examined him on the 30th, you didn't [482] see that scar did you? A. I saw it. I made no report in the record about it. I didn't consider it significant at all.

Q. Well now, is it your opinion that that scar had nothing to do with the condition of his finger? A. It is.

Q. And then Dr. Halleck was mistaken in his opinion? A. That was merely an opinion.

MR. HENNELLY: I think that is argumentative and I don't think this distinguishes—

Q. I will clear it up. Were you Dr. Halleck's superior? A. Yes, sir.

Q. Then Doctor, from what you have told us about the nerve up near the elbow, how can you say that the man being hung up by his wrists, would damage his fingers? A. Well, in any, even a minor struggle of any kind, the ulnar nerve is very susceptible to injury by contusion at that level, and it doesn't necessarily have to be by superficial scar at all, or a bruise or discoloration. It is a very sensitive area. It is called the funny bone. That is the ulnar nerve in the bony prominence at that point, and it is very prone to injury.

Q. But the hypothetical question that Mr. Hennelly put to you had to do with being hung up by the wrists? A. Yes, sir.

[483] Q. Well, how could you conceive of being hung up by the wrists damaging the elbow? A. I don't conceive of anyone being hung up in such a manner, espe-

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cially as the patient told me, with his hands tied behind him and against the rail or bars.

Q. Now, in the hypothetical question, nothing was said about rails or bars. A. Well, it is my opinion that the things that were described there, could very well lead to this type of injury.

Q. Sir? A. It was my opinion, if I may quote from my notes, that the results here were probably due to a contusion of the ulnar nerve.

Q. All right. I could take my elbow and hit it right like that, by hitting my funny bone and paralyze my fingers, couldn't I? A. You could.

Q. That is all.

Redirect Examination by Mr. Hennelly

Q. Doctor, would you tell his Honor, indicating on me if you can, the line of the ulnar nerve? A. The ulnar nerve, for simplicity's sake, beginning at the elbow level, follows through the groove as everyone knows, and the funny bone, and passes down in the nuclear portion [484] of the forearm, and passes, gives off branches to the muscles of the forearm, and passes on down into the wrist through the midportion, and gives off its major branches to the little and ring fingers.

Q. Now Doctor, where does it go from underneath this point here? A. It goes into the muscles.

Q. I see. Is the ulnar nerve at any position above the elbow? A. Oh, yes.

Q. All right. Tell His Honor, where that goes to? A. It comes through the muscle structure of the upper arm into the, in through the arm pit and I say goes that way, actually it comes from the spinal cord at the neck level, and it is made up of a number of branches of nerves coming out at different levels of the spinal cord. It forms a trunk or becomes localized in a group of nerves and

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passes down through muscular portions of the upper arm and of the elbow through the funny bone area.

Q. Now Doctor, if a man's arms were tied in back of him, in the method which I previously described to you in the hypothetical question, and the arms held back in that position, I am going to ask you if there couldn't be sufficient contusions, either, first of all to the wrist area in which the ulnar nerve passes, or to the upper extremity of the general [485] path of the ulnar nerve, to cause a partial paralysis of the complete lower extremity of the ulnar nerve in the two small fingers, could it be done? A. Yes.

Q. No further questions.

Recross-Examination by Mr. Riley

Q. Just by pulling? A. By pulling or twisting, or it doesn't have to be a contusion.

Q. Doesn't have to be a contusion? A. Doesn't have to be a definite blow on the nerve. It can be twisted so it is impinging against the bony prominence and cause the same effect as by direct contusion.

Q. But you didn't see any bruises on his wrist, did you. A. No.

Q. Well Doctor, is it likely or probable that the ulnar nerve would be damaged by twisting? A. It happens frequently.

Q. That is all.

MR. HENNELLY: That is all. That is the Defendant's Motion Your Honor.

THE COURT: Now, at the conclusion of the hearing held otuside of the hearing of the Jury, the request by the Defendant for a hearing upon the statement which has been identified as—

[486] MR. RILEY: 16 and 16-1.

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THE COURT: 16 and 16-1, it is the Court's opinion that the matters concerning the statement should be offered in the presence of the Jury, subject of course to any attacks as to its credibility by the Defendant. The Defendant has of course the right to proceed to challenge the voluntariness of the statement and confession, even before the Jury, but it is the Court's opinion that upon the evidence that has been offered before the Court and outside of the hearing of the Jury, that the statement is and should be admissible in evidence, subject to further examinations of the witnesses which might be conducted, so we may proceed with Sergeant Little, as to his identification before the Jury of the statement in question, Exhibit 16 and 16-1.

MR. HENNELLY: In other words, the Court is overruling my Motion, and request of the Court to hold as a matter of law, that those statements were involuntary, is that right?

THE COURT: That is right. Mr. Sheriff will you bring the Jury back in?

SERGEANT LITTLE,

BEING RECALLED, TESTIFIED:

Redirect Examination by Mr. Riley

Q. Sergeant, prior to the time that the Defendant Stidham made any statement, either oral or written, did you or did anyone in your presence promise him anything? [487] A. No, sir.

Q. Did you or anyone, did anyone in your presence threaten him with any force, violence or anything in order to get him to make a statement? A. No, sir, we did not.

Q. Did you or anyone in your presence, hit him, strike him or beat him? A. No, sir.

Q. Did anyone offer to the Defendant Stidham any physical violence whatsoever? A. No, sir, they did not, in my presence.

Q. Well, you saw him come in the room and leave, didn't you? A. Yes, I am pretty sure I saw him come in. I am pretty sure I was there when he came in. I know I saw him leave.

Q. Now, as best you can recall Sergeant, will you tell the Court and Jury just what the Defendant Stidham said about the death of Walter Lee Donnell?

MR. HENNELLY: At this time, if Your Honor please, the Defendant will object to any statement which was made at that time, and under those circumstances, for the reason that any statement which was made was made while the Defendant was in technical custody, and deprived of his Constitutional Rights, and to admit any statement would be a violation of the Constitutional Rights of this Defendant, under both the State and Federal Constitutions.

[488] THE COURT: The objection is overruled. Go ahead.

Q. Go ahead Officer. A. I am not sure that I remember everything that is in his statement. I remember though some of the things. I remember him saying that he was in Death Row, confined in Death Row at the time of the riot, and that he heard a lot of confusion and noise going on, which was the breaking into Death Row by the convicts who were engaged in the riot.

Q. Sergeant, you don't get my question, I mean did he make any oral statement in addition to what— A. In addition to this?

Q. Yes. A. I thought you were asking me to try to relate all that was in that statement.

Q. No. A. Yes, there was some—

MR. HENNELLY: May I augment that objection to include also the fact that this is, there is a written statement and that the State is bound by the written statement, and that this is an attempt to alter and to vary the terms of a written statement?

THE COURT: Well, come up here just a minute. (Out of the hearing of the Jury)

MR. RILEY: If the Court please, any admissions against interest is admissible against this defendant.

THE COURT: Yes. Now, you are asking this witness for statements [489] in addition to anything that might be contained in Exhibit 16 and 16-1?

MR. RILEY: Yes, sir, as an admission against interest.

THE COURT: Let's see, has the witness identified 16 and 16-1?

MR. RILEY: Yes.

THE COURT: And testified it was in the handwriting of the Defendant, I mean before the Jury?

MR. HENNELLY: He has done that.

THE COURT: And he has testified as to the Defendant's signature there too. I think that I would rather—I believe the objection will be overruled, but I believe that the witness ought to testify at this time, he should be asked the method by which this statement was obtained.

MR. RILEY: I thought we had.

THE COURT: I don't believe you have before the Jury.

MR. HENNELLY: I think he did Judge.

THE COURT: There has been so much testimony here, I know he has testified before the Court as to that. I don't believe the method of taking the testimony was—now wait a minute, he did tell who was there, but he didn't go into just how it was taken, and I think I would rather you would go into that first, so I will sustain the objection at this time.

MR. RILEY: (Back before the Jury) Sergeant, will you state to the Jury just how this statement was taken, or how it was made by the Defendant? [490]

A. The statement was made, the written statement was made by the defendant after he had made an oral state-

ment, which was somewhat similar to this, to the written statement.

Q. Now, who was questioning the defendant? A. I believe that Lieutenant Eitzman was doing that, that is the St. Louis Police Officer was doing the most of the questioning, the actual questioning. I think that it is probable that one or two other officers including myself, and Caldwell, injected some other questions into that general line of questioning, but Lieutenant Eitzman was actually handling the majority of the questioning.

Q. Now, did the Defendant write this statement in his own handwriting? A. Yes, sir, he wrote that statement after making an oral statement, which was something similar to that.

Q. And did you or anyone else tell him what to put in the statement? A. No, sir, there was no one told him what to put in the statement. We did, I did, I think follow along as he was writing it pretty well, and I did attempt to get it, to get him to put it in there in the proper sequence, following in the chronological sequence, and I also asked him to write in that opening sentence in there, in which he identifies himself.

Q. Now, he was asked to put that in there? [491] A. The rest of it was written in as he saw fit to write it himself.

Q. You didn't dictate it to him? A. No, there was no dictation, not even the first sentence was dictated, I told him that I wanted him in the first sentence, or the first paragraph, to identify himself.

Q. And this statement contains his own choice of words? A. The wording is his own.

Q. And the events and other matters mentioned in the statement are Stidham's own words? A. Yes, sir, that is his own words of what he says happened, with relation to the killing of Donnell.

Q. And it isn't what you say happened, is it? A. No, it is not.

Q. What is in that written statement is what Stidham wanted to write?

MR. HENNELLY: I certainly object to that as being a conclusion, object to the form of the question Your Honor and think it is invading the province of the Jury.

THE COURT: Well, the use of the word "wanted" may be stricken. The witness may be asked if it is what the defendant did write. The question of the voluntariness, etc., would be a question for the Jury. The objection will be sustained to the last question asked.

Q. All right. Did you or anyone else in any way cause, or make [492] Stidham put anything in that written statement that he didn't put in himself? A. Only that sentence that I referred to, that first sentence which was the, I think that identifies him as being the writer of this statement, but as to the facts contained therein, those things that pertain to the actual killing of Donnell, and the circumstances surrounding that, that is all his own story in his own handwriting, and in his own phraseology. That was not dictated to him.

Q. Now, in addition to what is contained in the written statement, did Stidham make an oral statement? A. Yes, he did.

Q. Will you tell the Jury just what statement was made, what happened? A. There is some things about the oral statement that I am not sure that I can talk from, exactly accurately from memory, but he made some remarks, or he made a statement similar to this in response to questions.

MR. HENNELLY: Your Honor, I am going to object for the reason that it is not responsive. I think the question is asking for the circumstances under which the oral statement was taken. I think this statement includes the substance of the oral statement.

THE COURT: He has asked him—the question was, what was the oral statement.

[493] MR. HENNELLY: Then may the record reflect that I renew the objection which I heretofore made and which Your Honor ruled upon heretofore?

THE COURT: The objection is overruled.

A. The oral statement that was made, was in response to direct questions by Lieutenant Eitzman and others, and was substantially the same as in the written statement. I can remember one thing in particular that I find is not in the oral statement, that is not in the written statement, that I can recall, was in the oral statement.

Q. What is that? A. That was a remark that, as I recall it, was made in response to a question by Trooper Caldwell, in which Caldwell asked him why all this took place, or why he was mad at Donnell, and—what is his name, I mean Creighton, and I can remember that the Defendant said that as far as Creighton was concerned, he was mad at him and wanted to kill him and would kill him if he ever had a chance, because he just didn't like the old son-of-a-bitch.

MR. HENNELLY: Your Honor, I ask that that be stricken and the Jury instructed to disregard it and a mistrial declared for the reason that is not an admission against interest with respect to this case, and for the further reason that it was not responsive to the question.

THE COURT: Of course the Exhibit 16 and 16-1, hasn't been [494] introduced in evidence, but the Court has read it in connection with the previous testimony, so in view of that the objection will be overruled.

Q. Confine your remarks to Donnell, if you will. A. Then he said with reference to Donnell, that the reason that he was mad at Donnell was because of the fact that Donnell was a snitch and had caused a lot of people

a lot of trouble in the Penitentiary, something to that effect. I don't remember the exact wording. I believe that is all I recall that was said in addition to the written statement.

Q. How long was Stidham down there in the field house? A. I think that it was probably between an hour and an hour and a half. I don't know the exact time.

Q. I believe that is all.

Recross-Examination by Mr. Hennelly

Q. Sergeant, what time did you first see the Defendant on the day in question? A. I think it was between eleven and eleven-thirty to the best of my memory.

Q. And you say that he was in there for about an hour and a half, an hour or hour and a half? A. Something between an hour and an hour and a half.

Q. Now then, I am going to ask you, when he arrived, was he handcuffed? [495] A. I am pretty sure he was.

Q. And were there some officers with him? A. Yes, I am pretty sure that he was brought down there by Trooper Caldwell, and a member of the St. Louis Police Department.

Q. Now, what was the name of this place that this questioning was conducted in? A. I believe that in most of the conversation I had about it, we called it the field house.

Q. An athletic place, was it? A. Yes, sir.

Q. This wasn't this same place, which I will show you on State's Exhibit 11, was it? A. No.

Q. This was what you called a field house? A. Yes.

Q. Now, how far was that away from the main building? A. From B and C Hall it is, I think maybe five or six hundred feet from B and C Hall.

Q. And I will ask you Sergeant, tell His Honor and this Jury what kind of furniture was in the room in which this interrogation was conducted. A. In the field house it is, there is a large room which was the only room that we used. There were a couple of adjoining rooms to that that were not used by us, but in the [496] room used by us, a rather large room, that contained, as I remember it, a table, something the size of that one as the counsel table there, and probably three or four or five benches up against the wall and some chairs. I don't believe there was any other furniture in the room.

Q. Now Sergeant, was this interrogation conducted in the center of the room or up against the wall, or where was it? A. Well, this table was down toward one end of the building I believe.

Q. And Sergeant, were all of you gentlemen armed? A. I suppose so. We were practically, well all the time up there.

Q. Did you have any additional sidearms on you during this time? A. I think that the officers who were bringing the prisoners backwards and forwards down there were probably armed with shotguns or rifles, and it is possible that some of the rest of us may have had, I don't recall about that, I am sure that we all had sidearms, but whether we had additional weapons, I am not sure.

Q. How was the defendant dressed when he first came into that room? A. He was in ordinary prison uniform.

Q. Can you tell us Sergeant the dimensions of that room? A. I think the room is about twenty feet by thirty feet.

[497] Q. Twenty by thirty? A. Yes, sir.

Q. And do you know how high it was to the ceiling? A. No, maybe eight feet, I believe.

Q. About eight feet? A. Yes, sir.

Q. Now then, I am going to ask you, when the Defendant was first questioned with respect to whether or not he had anything to do with the murder of Walter Lee Donnell, I am going to ask you if he didn't tell you and Lieutenant Eitzman and other people who were there that he didn't have anything to do with it? A. I think that at he first denied any knowledge of it.

Q. Can you tell this Court and Jury how long he said that he didn't have anything to do with it? A. Well, assuming that he was in there about an hour and a half, I would think that probably half an hour of that time he claimed that he didn't have anything to do with it.

Q. Now, during that half hour, did anybody threaten him or did anybody injure him or harm him in any way? A. No. sir.

Q. And then the defendant changed his mind and then he made a different statement and admitted some complicity in the thing, is that right? A. Yes, sir.

[498] Q. But you didn't have to do anything to him, did you? A. No, sir.

Q. All right. Now then, I am going to ask you Sergeant, was there a rope in that room? A. Not that I know of.

Q. Could there have been one that you didn't see? A. I don't think so.

Q. Did you at anytime while you were there, see this Defendant with his arms behind him and pulled up and suspended with his feet about six or eight inches off of the ground? A. No, sir.

Q. Now Sergeant, isn't it a fact that it was only after that, that the defendant changed his story and said, I will say whatever you want me to say? A. No, sir, that is not right.

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Q. That is not right? A. No, sir.

Q. He just did it, he went along for half an hour denying it, and then he said, then he went on and told, is that right? A. Yes, sir.

Q. All right. Now then Sergeant, you know who did the questioning? A. Lieutenant did most of the questioning.

Q. Did you ask any questions? [499] A. Yes, sir, I think I did.

Q. And were all of you seated around this table? A. Well, I couldn't say that they were all seated around that table, no, sir. I don't think they were.

Q. I will ask you, I am sorry, are you through Sergeant? A. Yes, sir.

Q. Did you at anytime while you were there, see the Defendant, his legs handcuffed or manacled? A. No, sir.

Q. Did you see any officer put a coat around him and put him down in that chair? A. No, sir.

Q. Nobody did a doggoned thing to him while you were there? A. He wasn't abused, no, sir.

Q. All right. Now then, I will ask you Sergeant, how long did it take him to give what you refer to as the oral statement? A. Oh, I think that was probably ten or fifteen or twenty minutes involved in conversation in which he was admitting the things that are in this written statement. That was before the writing started.

Q. And now Sergeant, you have indicated that the first sentence in that, which has been offered into evidence as State's Exhibit 16 and 16-1, that the first sentence was what you told him to put in there, is that right? [500] A. No, sir, it is a little hard to explain that, but I didn't exactly tell him, or dictate that first sentence to him. I told him what I wanted him to put in the first sentence, but I didn't dictate it word for word.

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Q. Sergeant, I want you to tell me what is the last word of the first sentence that you are referring to, the last word, just the word Sergeant? A. I will have to study this a minute, because there is not a period in there where I think the end of that part which I asked him to write was. I believe that the end of the part was Death Row.

Q. All right. Now then Sergeant, were you seated right down next to him? A. I was sitting across the table from him.

Q. Across the table? A. Yes, sir.

Q. Well, I understood that you had at least counseled with him in such a way that it would follow in the sequence that you wanted, isn't that right? A. Yes, sir.

Q. And would you then look at what he has written and suggested or implied that he should then take up another line of inquiry? A. No, as he was writing it he was stating it out loud to us.

[501] Q. He was sitting across, you were seated across the table and then he was writing it and saying it out loud, is that right? A. Yes, sir.

Q. Then what would you say to him? A. If I may have a look at that, I think I can explain what I am trying to say.

Q. Don't refer to anything that is specifically in there Sergeant, because it hasn't been offered in evidence yet. A. After that part of it which I said had to do with the identification of him?

Q. Yes. A. Who he was and where he was from and the fact that he was in the prison?

Q. Yes. A. Then I think a remark was made, well go ahead and start at the beginning of the riot, the first thing you knew about the riot, and write down about that.

Q. Now, how many times during the course of the time that that was being written did you have to interject some suggestion in order that it would be kept in the proper order? A. I don't recall after he once started on that part of the statement, of ever having to do anything further in the direction of the sequence. I don't remember anything further.

[502] Q. Well then, when you told His Honor, Judge Weber, and this Jury, that you had to tell him how to write it so that it would be kept in the proper order, you were only referring to one time, is that right? A. No, I am not too definite about that. I can remember of talking about the starting of that statement which has to do with the riot itself, and it may be that further on down in there I may have said something to him to get him back onto the path, I don't remember. I am just not sure about that.

Q. Did you ever tell him to scratch anything out and to start on some other line? A. No, sir, I don't believe so.

Q. You don't think so? A. No.

Q. Now then, can you give His Honor and this Jury any idea of what time the Defendant began writing that statement? A. Well, to the best of my memory, I would say it was somewhere between twelve and twelve-thirty. I do not remember the exact time.

Q. Can you give us any idea of the length of time consumed in writing the statement, both pages? A. I don't think it was over, not over half an hour consumed in the writing of the statement.

Q. Now, if you were seated, were you seated directly across [503] from this man? A. Yes, sir.

Q. And if I understand correctly Officer, the table which was used was a table about the size of the counsel table, is that right? A. Yes, sir.

Q. Now, where was Sergeant, Lieutenant Eitzman sitting? A. Sergeant Eitzman was sitting at, as I recall

it now, he was sitting at another corner of the table. May I explain it this way, that I was sitting in a position similar to where you, the defense counsel are sitting, and the Defendant was sitting across the table from me in a position somewhere near where Mr. Riley is sitting and Lieutenant Eitzman would have been sitting back at the corner on the same side of the table I was on, but on the other end of the table.

Q. All right. Now, was there anybody else at that table? A. I can remember that Trooper Caldwell was sitting at the far end of the table, and I am not sure where these other officers were seated around there part of the time, probably not right at the table, but there were other benches around near the wall.

Q. What were, were any of the other people besides you and Lieutenant Eitzman doing anything? A. Well, they was, several questions that may have been asked by these other people. I just don't remember. I remember [504] Sergeant, Trooper Caldwell asking a question, but I can't remember specifically of any of the St. Louis Policemen asking questions. They might have.

Q. Was anybody writing anything down besides the Defendant? A. Caldwell was taking notes.

Q. Now then, after the Defendant was through, finished writing, was he manacled and again handcuffed again? A. Well, he was when he was taken out.

Q. And was he, during this first interrogation when the oral statement was given, was he handcuffed then? A. I think he was handcuffed until the time that he started the writing.

Q. Do I understand your testimony to be that in his oral statement he told you that the reason that he wanted to kill Donnell was because Donnell was a snitch, or an informer or something like that, and that he had talked on some other people, and those people had gotten into some trouble, was that your testimony? A. Yes, sir.

Q. And he thought that that sort of thing was so bad, that that man should have been killed, or words to that effect? A. That is why he said he wanted to kill Donnell.

Q. Anybody—strike that. I have no further questions Your Honor.

[505] *Redirect Examination by Mr. Riley*

Q. Sergeant, did you see the Defendant Stidham sign that statement? A. Yes, sir.

Q. And did you sign it as a witness? A. Yes, sir.

Q. And did you initial the first page and sign the second page? A. Yes, sir.

Q. That is all.

MR. HENNELLY: No further questions Your Honor.

LIEUTENANT WALTER EITZMAN,

BEING RECALLED, TESTIFIED:

Redirect Examination by Mr. Riley

Q. Will you state your name please? A. Walter Eitzman.

Q. Where do you live sir? A. 5435 Christy Boulevard, St. Louis, Missouri.

Q. How old are you? A. Forty-seven years.

Q. And where are you employed? A. St. Louis Metropolitan Police Department.

Q. What rank? A. Lieutenant.

Q. How long have you been with the St. Louis Metropolian Police Department? [506] A. Little over twenty-five years.

Q. I will ask you if you are acquainted with the Defendant Stidham? A. Yes, sir, I am.

Q. I will ask you if on September 27th, 1954, you saw the Defendant Stidham? A. I did.

Q. Where? A. In the field house of the Penitentiary.

Q. Had you ever seen him prior to that time? A. No, not that I know of.

Q. And were you in the field house when the Defendant came in? A. Yes, sir, I was.

Q. Who brought him in? A. Trooper Caldwell and Patrolman Jenneman of the St. Louis Police Department.

Q. Were you there all the time that Stidham was there? A. I was.

Q. I will ask you if at anytime either you or anyone in your presence made any promises of any kind to the Defendant Stidham? A. I did not. I never heard anyone.

Q. I will ask you or anyone else there ever threatened the Defendant? [507] A. I did not.

Q. I will ask you if you or anyone there ever hit him, beat him or struck him either with your fists or a club or any other instrument? A. No.

Q. I will ask you if you ever tied him and hung him up from the ceiling? A. No, sir.

Q. Lieutenant, I will show you what has been marked as State's Exhibit No. 16 and a second page marked 16-1, have you ever seen that? A. Yes, sir, I have.

Q. Where did you see it? A. I saw this when it was written in the field house on September 27th, at about 12:30 P.M.

Q. Who wrote it? A. James Stidham.

Q. I will ask you to tell the Court and Jury just what happened there as near as you can recall it, at the time Stidham came into the room until the time he left. A. Stidham came in and he was brought in rather, about eleven o'clock in the morning, and questioned in reference to the riot, and to the murder which occurred in Death Row, on the night of the riot. And of course at first he denied being down in the cell, in Death Row, and not having any part in the actual murder.

[508] Q. How— A. However, after about twenty or twenty-five minutes of questioning, I had talked to him and explained to him that I had a statement—

MR. HENNELLY: Object to that, and ask that that be stricken and the Jury instructed to disregard it, and a mistrial declared, being hearsay and not binding on this Defendant, and ask that it be stricken, and if Your Honor desires any cases, I will cite the Court some cases.

THE COURT: Well, the witness hasn't said anything as yet. The objection will be sustained as to what this witness told him.

MR. RILEY: This was in the presence of the Defendant.

THE COURT: No, bring your machine up here Mr. Ehlers. (Out of the hearing of the Jury) He never said anything, he said I told him that I had a statement, and I don't know whether he finished the full word of statement or not. I don't know if the Reporter has got it or not. I don't think that the witness ought to testify as to what he told the Defendant about other statements that he may have had. What would be your purpose in showing that?

MR. RILEY: To show why this man decided to quit denying it and then admit it.

MR. HENNELLY: Your Honor, might I say this, the Lieutenant's statement is not binding on this defendant. What this amounts [509] to is hearsay by indirection, and the Montgomery Case indicated the same thing. The substance of such a statement is this, that the other statements, and that the other things which were said by the other co-defendants implicated this defendant and under those circumstances, it is a denial of the Constitutional Rights of this Defendant.

THE COURT: I don't know what this statement that the witness might have testified to might have been, but that is the thing that I am afraid of, is that there may be

some things that he is going to refer to by other statements made by other parties, which would be admissions by other parties that would implicate the Defendant, which would be getting over to this Jury that other people had said that this Defendant did certain things, and that certainly is hearsay.

MR. RILEY: What I think he is going to testify to is that he told this Defendant that he had a statement implicating Stidham.

THE COURT: Yes, other people implicating Stidham. I am not going to permit it, the objection will be sustained and the request denied. Nothing said in this record up to this time by this witness in his testimony that needs to be—that the Jury needs to be directed to disregard. He merely said, I told him I had other statements, and the interruption came at the word, statement.

MR. RILEY: If the Court please, I would like for the Court to [510] caution the witness not to make any reference to any other statements.

THE COURT: I don't remember now what the last question was that you asked him. I am ruling that you shall not testify before the Jury at least at this time as to statements that other prisoners may have made to you which you told or conveyed to the Defendant.

A. Okay.

Q. The question was to tell everything that happened.

THE COURT: Lets go back and see what the last question was.

Q. I asked him what he had said to him.

THE COURT: What he had said to Stidham, what this witness said to him?

MR. RILEY: What he said to Stidham.

THE COURT: I don't think so. Lets go back and find the question.

MR. HENNELLY: I don't know, I think that is a pretty prejudicial thing. I think if the Court will read these two cases, especially this Montgomery Case, it hits it right on the nose.

THE COURT: I have already ruled on it and my ruling is the same, except that I think he ought to ask this witness the question so that counsel for Defendant may have an opportunity to object if he wishes to object, but I am ruling that this witness is not to testify or not to be asked what statements he [511] made, or what statements he had from other parties, and that he told the Defendant about. He can tell what the Defendant said.

Q. Lieutenant Eitzman, how long did you talk to the Defendant about the killing of Donnell? A. Prior to him writing a statement, writing, reducing a statement to handwriting, I would say about thirty minutes.

Q. And then did the Defendant write this Exhibit 16 and 16-1? A. He did.

Q. And will you tell the Court and Jury just how he went about writing it, what was done and what was said? A. I asked him if he would desire to reduce his statement that he had made to handwriting, and he said he would, so he was seated at a table in the field house and given a pen by Sergeant Little and he wrote the statement out after we asked him one or two questions, as a preliminary basis for the statement, which was his age and where he was situated at the time of the riot and what he was doing his time for. And then we told him to go ahead and tell in his own words or write in his own words, own handwriting, his own thoughts about just what happened.

Q. Now that Exhibit 16 and 16-1, does that contain your words or Stidham's words? A. These are Stidham's words.

[512] Q. Did you dictate it to him? A. No, sir.

Q. Did you tell him what facts to relate in there? A. No, sir, except that we wanted the information he had just told us pertaining to the murder.

Q. All right. Now, how long did it take him to write it? A. Oh, I would say fifteen or twenty minutes.

Q. Did he sign it? A. Yes, sir, he did.

Q. Did you sign it there as a witness? A. I did.

Q. In his presence? A. I did.

Q. Did you see him sign it? A. I certainly did.

Q. You also initialed the first page there, 16? A. I did.

Q. Now, in addition to what is contained in that written statement, did you have any other conversations with him about Donnell? A. Yes, sir, I asked him—

MR. HENNELLY: Same objection which I heretofore made with respect to the oral statements Your Honor. May I say this, may the objection, I think it is the type of objection that may go to all of this testimony, because he was in custody at [513] the time, and I take the position that both the oral statement and the written statement was in violation of his Constitutional Rights, so that objection to any and all statements which the Defendant made after he was taken into custody—

THE COURT: Yes, and the objection is overruled.

MR. HENNELLY: Very well.

THE COURT: You may proceed.

Q. Go ahead Lieutenant. A. May I have the question please.

THE COURT: Did he make any oral statement other than the statements that are contained in the Exhibit 16 and 16-1?

A. Yes, sir, he did. He stated that he was somewhat peeved at Donnell, because Donnell had snitched on some prisoners back in St. Louis, and caused them to receive a

lot of time and that also Donnell had snitched on him, and it was Donnell's fault that he was being detained down in Death Row. He said that he told him that he had told the guard about him, and another inmate attempting to start a riot about two months prior to this riot.

MR. HENNELLY: Object to that particularly, and ask that that be stricken and the Jury instructed to disregard it and a mistrial declared, for the reason it is an attempt to prove another time, and trying to put the, attempt to put the reputation of the Defendant in—at issue.

[514] THE COURT: Overruled.

MR. RILEY: That is all.

Recross-Examination by Mr. Hennelly

Q. Lieutenant, there are rules, are there not, within the Police Department, against beating anybody, isn't that right? A. That is correct.

Q. And as a matter of fact, the beating of any prisoner, even under those circumstances, would make anyone doing that, beating, liable to Federal prosecution? A. That is true.

Q. You are familiar with that, aren't you? A. Yes, sir.

Q. And you realize that if you had beat any prisoner under those circumstances, you could be prosecuted under the Federal Civil Rights Statute? A. Yes, sir.

Q. You know that? A. Yes, sir.

Q. So you tell the Court and Jury that you didn't beat anybody, isn't that right? A. That is right.

Q. And you didn't beat anybody up in Jefferson City?

MR. RILEY: If the Court please, we object to the form of the question, it is argumentative and it should be confined to [515] this defendant.

THE COURT: Yes, the objection will be sustained.

Q. I withdraw the question.

MR. RILEY: He said anybody in Jefferson City.

MR. HENNELLY: I withdraw it. When did you arrive in Jefferson City Lieutenant, with respect to the night of the 22nd of September? A. About eleven o'clock P.M., Central Standard Time.

Q. And was the head of the Police Force of the City of St. Louis up there? A. Yes, sir.

Q. Colonel Long? A. Yes, sir.

Q. An appointment, an appointee of the Governor, isn't that right? A. That is right.

Q. And were you on duty up there from the night of the 22nd on? A. I was.

Q. How long did you remain up there? A. One week to the day, until the 29th.

Q. Now, I will ask you if, during the time that you were up there, that you used any physical violence on any prisoners during the riot?

MR. RILEY: Object to that, not material, and they have got [516] twenty-eight hundred convicts up there.

[516] THE COURT: The objection will be sustained, and Gentlemen of the Jury, may I say this, that when the Court sustains an objection to a question that has been asked, there are no inferences to be drawn from that question or from the sustaining of the objection, or from the ruling of the Court. Now, we are concerned with the case of the Defendant, and the case of this Defendant only. And this witness may be cross-examined about anything concerning this Defendant that he may or may not have done, or that counsel wishes to cross-examine him about, but the asking of matters as to other parties would not be material in the trial of this case, and the fact that they weren't answered or were answered, or that the Court sus-

tains an objection to them, are not to leave any inferences in the minds of the Jury. All right, you may proceed.

MR. HENNELLY: May I make one statement in the record?

THE COURT: You may.

MR. HENNELLY: That that was, the question was asked for the purpose of showing the state of mind of the officers and I was going to augment that question, and expand it to determine whether or not any such misconduct had been done in his presence to show the state of mind of the other officers who are testifying in this case, and to show what interest, if any, they might have in their testimony. That [517] was the reason for saying it Your Honor.

THE COURT: The objection is still sustained.

Q. Very well Your Honor. Now then, I am going to ask you, did you question, while you were in Jefferson City, any of the Thompson boys? A. No, I did not.

Q. Did you question Linder? A. Not that I know of.

Q. Now then, when the Defendant came in, he was with one of your Police Officers, is that right? A. A Police Officer and a Trooper.

Q. And I believe that you are attached to the Central District in St. Louis, are you? A. That is right.

Q. That is the downtown district? A. That is correct.

Q. And this officer who was with him, did you know which one it was? A. Yes, sir, I do.

Q. Who was it? A. Patrolman Jenneman.

Q. Now, what district is he out of? A. Central.

Q. He is out of your district? A. Yes, sir.

Q. And Billings, who was there, was he out of your district [518] also? A. That is correct.

Q. And I will ask you this, can you give His Honor and this Jury any idea, with respect to the time that the Defendant came into that room? A. That he came in?

Q. Yes. A. I would say about eleven o'clock in the morning on the 27th.

Q. And I believe you have indicated that he had first denied any complicity in this murder completely? A. That is right.

Q. As a matter of fact, ever since the time of the riot he had denied any complicity? A. That I don't know. That was the first time I talked to him.

Q. And—

MR. RILEY: Just a moment, let the man answer the question.

THE COURT: Yes, give him an opportunity to answer.

Q. I think he has answered it Your Honor. His statement, or his answer was that that was the first time he talked to him. A. That is correct.

Q. During this original questioning, in which this Defendant denied any part in this thing, was he standing or sitting? A. Sitting.

[519] Q. And was he sitting in the same position that he sat throughout the entire interrogation, and during the time that State's Exhibit 16 and 16-1 was written? A. No, sir, he wasn't.

Q. All right, did he get up at anytime? A. Yes, sir, he did.

Q. When in the course of that interrogation did he get up? A. After he had gave a verbal statement, he was asked to move over to a table where he could sit and write. He walked to that table.

Q. Now then, will you tell us where within that room his original questioning took place then? A. Well, he was more or less sitting about five or six feet away from a table in the center of the floor.

Q. And did you officers, were you officers around him? A. Not all around him. My back was against the table sitting in a chair, and the other officers were, Trooper

Caldwell was to my right and Sergeant Little was on my left. He was seated at the table. Trooper Caldwell was standing up, and Jenneman and Overbeck were somewhere right in back of me, or on the side of me.

Q. And what was the closest officer in that room to the Defendant at that time? A. I was.

Q. And at that time, were there any manacles on his feet? [520] A. Manacles?

Q. Any handcuffs on his feet? A. No.

Q. There wasn't any, did you see any rope in there? A. No, sir.

Q. Was he ever lifted from the ground and suspended from the ceiling? A. No.

Q. That wasn't done? A. No.

Q. Did he ever pass out while he was in there? A. No.

Q. Did he make any complaint to you with respect to the paralysis of his left hand? A. He did not.

Q. Did you examine his hand or did you examine him yourself to see whether or not there had been any physical injury to him? A. No, I didn't.

Q. Did you at anytime see him with his hands behind him suspended from the ceiling? A. No.

Q. Now, did anybody besides you ask any questions? A. I did most of the questioning and the verbal questioning until he made his verbal statement, and it is possible that one or two of the officers may have asked a question.

[521] Q. Now then, did anybody, after he began writing that statement, did anybody at all stop him at anytime and tell him to take a different path of attack, or to change anything or do anything like that? A. No, they didn't.

Q. Was there anybody looking at him as he was writing? A. Yes, sir.

Q. Who was doing that? A. Sergeant Little was looking at him and I was standing there, standing watching him.

Q. Were you standing close to him? A. I would say within three feet.

Q. You weren't sitting down at the end of that table then, you were standing at one of his sides, is that right? A. I was standing and sitting, I may have sat down a few minutes and got up again.

Q. Are you finished? A. Yes, sir.

Q. Did any of you fellows have any shotguns with you in there? A. We had riot guns.

Q. Riot guns? A. Yes, sir.

Q. And I will ask you this, where with respect to the point that the Defendant was sitting, was Sergeant Little sitting? A. He was at the Defendant's right side.

[522] Q. At the Defendant's right side? A. Yes, sir.

Q. And where were you Lieutenant? A. I was on his left side.

Q. Was Little standing or sitting? A. Sitting.

Q. Now, I will ask you Lieutenant, how long did it take the Defendant to write that statement? A. Like I said before, about twenty minutes.

Q. Twenty minutes? A. Yes, sir.

Q. Didn't anybody in there even make an abusive statement of any kind to him? A. No, sir.

Q. Did not? A. No.

Q. Didn't threaten him at all? A. None whatsoever.

Q. No further questions Your Honor.

Redirect Examination by Mr. Riley

Q. Lieutenant, do you recall what kind of a ceiling is in that building? A. No, I certainly don't, not exactly. I know it is rather low.

Q. Well, is it exposed rafters? [523] A. No, sir, it is a solid ceiling, it is covered.

Q. That is all.

MR. HENNELLY: No further questions.

ELMER OVERBECK,

BEING RECALLED, TESTIFIED:

Redirect Examination by Mr. Riley

Q. Will you state your name please? A. Elmer Overbeck.

Q. And how old are you sir? A. Thirty-seven.

Q. Where are you employed? A. St. Louis Metropolitan Police Department, St. Louis, Missouri.

Q. How long have you been employed by the Police Department? A. Going on six years.

Q. I will ask you if you are, if you know the Defendant Stidham? A. I do.

Q. I will ask you to examine Exhibit, State's Exhibit 16 and 16-1. A. Yes, sir.

Q. Is that Exhibit, does that Exhibit contain your signature? A. That is it on the bottom of the second page.

Q. And what about the first page? A. That is the first of the second page, it is all the same [524] statement.

Q. Did you, who signed the statement? A. I did myself, along with the other officers.

Q. Who made the statement? A. The Defendant Stidham.

Q. Now, where were you when this statement was made? A. We were in the field house over by the ball diamond adjoining the Penitentiary proper.

Q. I will ask you if, were you there when Stidham came in? A. I was there then.

Q. Now, tell the Court and Jury as near as you remember, what, if anything, happened from the time he got in there? A. Well, he was brought down to the field house adjoining the baseball diamond, and I was in there with the other officers, two officers brought him down, and he sat down at a table and we talked to him for a while.

Q. Now, who did the talking? A. Lieutenant Eitzman did most of the talking.

Q. All right. Go ahead. A. And we talked to him I imagine twenty or twenty-five minutes, something on that order, regarding the riot and the killing of Donnell, and after about twenty-five minutes of talking to him, he stated he wished to make a statement, and then he went on and gave us an oral statement in regard to what all happened, and after doing that, he finished by [525] stating that he wanted to make a written statement, which he did.

Q. Now, that Exhibit that you have there, did you all dictate that to him? A. No sir.

Q. Did he write it himself? A. Yes, sir, he wrote it himself.

Q. Did anyone else tell him what to put in it? A. Not at any time.

Q. Did anyone tell him what words to use? A. No, sir.

Q. Now, officer, you have read that statement over? A. I have.

Q. You say that he made an oral statement prior to that? A. He did.

Q. Now I will ask you if he made a statement in your presence orally, as to any motive he might have had for the killing of Donnell?

MR. HENNELLY: Object to the form of that question being leading and suggestive and calling for a conclusion Your Honor.

THE COURT: Overruled, it is asking for a statement.

Q. I asked him if he did make a statement. Did he make such a statement? A. He did.

[526] Q. Now, as near as you can recall, what did he say?

MR. HENNELLY: Now, I renew the objection Your Honor.

THE COURT: Overruled.

MR. HENNELLY: Very well.

A. Well, at that time we asked him what his reason was for participating in the riot, and the killing, and he stated to us in regard to the killing of Donnell, that he didn't like him, he was a snitch. That he had snitched on him previously with other fellows that he had snitched on with regard to the riot that they had in July at the Penitentiary and caused him to be placed in O hole.

MR. HENNELLY: Object to that and ask that it be stricken and the Jury instructed to disregard it and a mistrial declared, for the reason it is an attempt to prove another crime, and put the character and reputation of the Defendant at issue.

THE COURT: Overruled.

Q. Officer, while you were there, did you or did anyone in your presence promise him anything to make either the oral or written statement? A. Not at anytime.

Q. Did you or anyone there threaten him in any manner? A. No, sir.

Q. Did you or did anyone there in your presence hit the Defendant? [527] A. No, sir.

Q. Either with your hand or fist or club or any instrument? A. No, sir.

Q. And did you or did anyone there hang him up from the ceiling? A. No, sir.

Q. Do you recall what kind of a ceiling is in that building? A. It was a flush flat ceiling, the way I recall it, just a straight board across.

Q. Are there any exposed rafters or anything in there? A. No, I never noticed anything like that.

Q. Is that the building that you and the other St. Louis officers were using at that time in the Penitentiary? A. That is the one, the field house.

Q. Was there any particular reason why this Defendant was taken there?

MR. HENNELLY: Object to the form of that question as calling for a conclusion, and would be a self-serving statement.

THE COURT: This witness knows why this Defendant was taken there, if he knows, he may answer, as to whether it would be a particular reason or not, I don't know.

Q. I withdraw the question Your Honor.

THE COURT: All right.

MR. RILEY: That is all.

[528] *Recross-Examination by Mr. Hennelly*

Q. Officer Overbeck, you are attached to the Central District in St. Louis, aren't you? A. That is right.

Q. Now Officer, I am going to ask you whether or not in the course of the interrogation of this Defendant. you mentioned, you personally ever mentioned the words Linder and Thompson? A. Myself?

Q. Yes, you? A. Never.

Q. Now, Officer, you are acquainted with Linder and Thompson, aren't you? A. I am acquainted with Linder.

Q. And with Thompson? A. No, sir.

Q. Isn't it a fact that while you were in St. Louis, weren't you active in that investigation of that particular

case, under which Thompson and Linder and Donnell were convicted? A. I arrested Linder with three other members of a hold-up gang, which Thompson was not involved in at that particular arrest.

Q. I see. Do you know of your own knowledge whether or not Donnell, who was the person who was dead in this case, had not assisted the Police Department and had not testified against Linder and Thompson in St. Louis? [529] A. I couldn't say. I don't know.

Q. You don't know? A. I don't know. I was not there.

Q. Well, do you know of your own knowledge, now, where were you, you were not there, you don't know of your own knowledge? A. I could only testify to hearsay and that won't—

MR. RILEY: He has answered.

THE COURT: The witness could only testify to what he knew about it actually from his own knowledge.

Q. That is what I was asking him.

THE COURT: Well, he has said that he doesn't know from his own knowledge.

A. I wasn't there.

Q. Now then, I will ask you, did you, were you one of the officers that went over and got the Defendant? A. No, I wasn't.

Q. Did you at anytime have any conversation with this Defendant about his wrist watch? A. Never.

Q. Never did? A. No.

Q. When he came in, do you recall whether or not he had a wrist watch on? A. No, I don't.

Q. Did you, while you were up in the Penitentiary on this case, did you personally interrogate Linder and Thompson up [530] there? A. Never.

MR. RILEY: If the Court please, I don't know what Thompson and Linder has to do with this case, the mate-

riality, I object to it for the reason it is not material whether he ever talked to Linder or Thompson. I can't see where it proves or disproves anything in this case.

MR. HENNELLY: I think in view of the fact that Linder and Thompson are mentioned in that statement, I think that then there will be some testimony in respect to Thompson and Linder in the statement that this officer made, I wanted to show whether he talked to Thompson and Linder, and they are referred to in 16 and 16-1.

THE COURT: Let me see your exhibit again please. I think the Defendant should be permitted to cross-examine about whether this witness ever spoke to Linder or Thompson.

MR. RILEY: You mean, is that in the Penitentiary?

MR. HENNELLY: Yes, sir.

MR. RILEY: My objection was prior to that.

THE COURT: He previously testified that he arrested Linder and don't know anything, didn't have any personal knowledge about Thompson.

MR. RILEY: I have no objection to any question about in the Penitentiary.

Q. I think that I asked you Officer Overbeck, did you during [531] your tour of duty after September 22nd in Jefferson City, at the Penitentiary, interrogate or participate in interrogating either Linder or Thompson? A. No.

Q. You didn't? A. No.

Q. Now then, I am going to ask you Officer, do you know how long the Defendant was in that room altogether? A. In the field house?

Q. Yes. A. Must have been around an hour and a half.

Q. How long was he in there before he first left? A. Before he first left?

Q. Before he, I am sorry. I withdraw that. How long was he in there before he was questioned, or was he